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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

Nonprofit National Corporations Loan and Grant Program

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) removes, as unnecessary, regulations concerning the Nonprofit National Corporations Loan and Grant Program from the Code of Federal Regulations, since no funding is available or requested. This action is being taken as part of the National Performance Review program to eliminate excess regulations and to improve the quality of those that remain in effect.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Allen, Business Programs, Servicing Division, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3224, Washington DC 20250–3221, telephone (202) 720–8604.

SUPPLEMENTARY INFORMATION:

Classification

This action is not subject to the provisions of Executive Order 12866 since it involves only internal Agency management. This Action is not published for prior notice and comment under the Administrative Procedure Act since it involves only internal Agency management and publication for comment is unnecessary and contrary to the public intent.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule since the Rural Business-Cooperative Service (RBS) is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking to effect these administrative changes.

Environmental Impact Statement

This action has been reviewed in accordance with 7 CFR part 1940, subpart G, ‘‘Environmental Program.’’ The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Executive Order 12778

This rule was reviewed in accordance with Executive Order 12778. The provisions of the rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments, and the private sector. Under section 202 of the UMRA, RBS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ‘‘Federal mandates’’ that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments, or the private sector. Thus, today’s rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

This final rule does not impose any new information or recordkeeping requirements on the public. The Agency will update the data documenting the burden on the public at its regularly scheduled burden submissions to OMB.

Background

This final rule removes regulations concerning the Nonprofit National Corporations Loan and Grant Program from the Code of Federal Regulations, since no funding is available or requested.

List of Subjects in 7 CFR Part 1980

Business and industry, Grant programs—business, Loan programs—business, Nonprofit organizations, Rural areas. Accordingly, Chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart G—[Removed and Reserved]

2. Subpart G, consisting of §§ 1980.601 through 1980.700 and appendices A through D, is removed and reserved.

Dated: September 9, 1996.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 96–27765 Filed 10–29–96; 8:45 am]

BILLING CODE 3410–XT–U

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 934

[No. 96–71]

Amendment of Budgets Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation governing approval of Federal Home Loan Bank (FHLBank) budgets by removing the requirement that the FHLBanks’ budgets be approved by the Finance Board. In order to ensure sufficient data to carry out its

supervisory responsibility to ensure the safety and soundness of FHLBank operations, the final rule establishes specific requirements for the FHLBanks' preparation and reporting of both budget and other financial information to the Finance Board. Certain of these reporting requirements are derived and streamlined from the Finance Board's current practice for budget and financial information reporting by the FHLBanks. The final rule is consistent with the Finance Board's continuing effort to devolve management and governance authority to the FHLBanks. It also is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

EFFECTIVE DATE: The final rule is effective November 29, 1996.

FOR FURTHER INFORMATION CONTACT: John C. Waters, Office of Resource Management, (202) 408–2860, or Sharon B. Like, Senior Attorney-Advisor, Office of General Counsel, (202) 408–2930, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1421 to 1449, does not provide explicitly for Finance Board approval of Bank budgets. *See id.* section 1432(a). Such approval authority is derived from the Finance Board's general powers and duties to supervise the FHLBanks under sections 2A(a)(3) and 2B(a)(1) of the Bank Act, as well as the Finance Board's authority to approve corporate powers granted to the FHLBanks under section 12(a) of the Bank Act. *See id.* sections 1422a(a)(3), 1422b(a)(1), 1432(a).

Section 934.6 of the Finance Board's existing regulation provides:

> As prescribed by the [Finance] Board or its designee, each Bank shall prepare and submit to the Board for its approval a budget. Each Bank will operate within such budget as approved or as it may be amended by the Bank's board of directors within limits set by the Board. Any amendment beyond such limits must be submitted to the Board for approval. The Board's designee, may approve amendments within limits set by the Board.

See 12 CFR 934.6.

The substance of § 934.6 previously appeared at § 524.6 of the regulations of the Finance Board's predecessor, the Federal Home Loan Bank Board (FHLBB). *See* 12 CFR 524.6 (1989). (redesignated). The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 183 (Aug. 9, 1989), amended the Bank Act by creating the Finance Board and transferring from the FHLBB to the Finance Board the responsibility for the supervision and regulation of the twelve FHLBanks. *See* 12 U.S.C. 1422a(a), 1422b(a)(1). Section 524.6 subsequently was redesignated as § 934.6 of the Finance Board's regulations. *See* 54 FR 36757 (Sept. 5, 1989).

In approving the FHLBanks' budgets under current § 934.6, the Finance Board's practice, which is not codified in the regulation, has been to request from each FHLBank a report on the FHLBank's annual budgets approved by its board of directors, including the following information: projected balance sheet; projected income statement (including FHLBank board-approved operating expense budget and staffing levels); FHLBank board-approved capital expenditures budget; supplemental information as requested by the Finance Board; strategic/business plan; organizational chart; FHLBank board-approved budget resolution; and management discussion of the FHLBank's expected financial performance and underlying assumptions and comparisons with the financial performance from the prior year.

Pursuant to § 934.6, the Finance Board approves each of the FHLBanks' operating expense and capital expenditures budgets. The Finance Board also approves amendments to FHLBank budgets that exceed previously approved limits.

In addition, Finance Board practice has been to require each FHLBank to submit quarterly reports that evaluate year-to-date actual performance results relative to the budget projections as originally approved or amended, and reforecasted financial projections for the remainder of the year relative to the budget projections as originally approved or amended. Each FHLBank also submits an annual report that evaluates the actual performance results for the year relative to the budget projections as originally approved or amended.

The Finance Board has been considering ways to transfer a variety of governance responsibilities it exercises to the FHLBanks since the completion of studies by the Congressional Budget Office, General Accounting Office, Department of Treasury, Department of the Housing and Urban Development, and Finance Board, which were required by the Housing and Community Development Act of 1992, Pub. L. 102–550, 106 Stat. 3672 (Oct. 28, 1992). These studies recommended that the governance and regulatory responsibilities for the FHLBanks be separated, with the FHLBanks carrying out the management functions, and the Finance Board exercising regulatory oversight over the FHLBanks. The Finance Board already has taken actions to devolve other governance functions to the FHLBanks, including its recently adopted final rule transferring responsibility for all FHLBank membership approvals from the Finance Board to the FHLBanks. *See* 61 FR 42531 (Aug. 16, 1996) (to be codified at 12 CFR part 933).

Approval of the FHLBanks' budgets is a management responsibility which the Finance Board believes is best administered by the FHLBanks' respective boards of directors. Therefore, the Finance Board approved for publication a proposed rule to amend the budgets regulation by eliminating the requirement that the Finance Board approve FHLBank budgets, while establishing reporting requirements for the FHLBanks in order to ensure that the Finance Board has sufficient information to carry out its supervisory responsibility. The notice of proposed rulemaking was published in the Federal Register on August 9, 1996, with a 30-day public comment period that closed on September 9, 1996. *See* 61 FR 41535 (Aug. 9, 1996).

The Finance Board received a total of seven comment letters in response to the notice of proposed rulemaking. The commenters included five FHLBanks and two trade associations. All comment letters addressing the issue supported the elimination of Finance Board approval of FHLBank budgets. Generally, commenters viewed budget approval as a management responsibility best administered by the Banks' boards and the transfer of this responsibility as consistent with the Finance Board's devolvement of corporate governance authority.

In addition, most commenters addressed one or both of the two issues in the proposed rule for which comments were specifically requested—Finance Board determination of a consistent interest rate scenario to be incorporated in FHLBank budgets and adoption of an efficiency standard in the rule. One commenter also presented views on establishing a threshold for budget amendments submitted to the Finance Board and on overall reporting requirements proposed by the Finance Board. Specific comments are discussed in Section II of the **SUPPLEMENTARY INFORMATION.**

II. Analysis of Public Comments and the Final Rule

The final rule sets forth responsibilities and requirements for adoption of annual FHLBank budgets, and reporting requirements for annual budgets, budget amendments, mid-year reforecasted projections, and annual actual performance results.

The following is a section-by-section analysis of the final rule.

A. Adoption of Annual FHLBank Budgets—§ 934.6(a)

Section 934.6(a)(1) of the final rule provides that each FHLBank's board of directors shall be responsible for the adoption of an annual operating expense budget and a capital expenditures budget for the FHLBank, and any subsequent amendments thereto, consistent with the requirements of the Bank Act, § 934.6, and other regulations and policies of the Finance Board. Finance Board approval of FHLBank operating expense and capital expenditures budgets will no longer be required. However, eliminating the requirement that the Finance Board approve FHLBank budgets will not preclude the Finance Board from continuing to require the reporting of FHLBank budgets and other financial information (as codified in this final rule), as part of its regulatory oversight responsibility. Furthermore, adoption of this final rule does not remove or modify the requirement in section 12(a) of the Bank Act that a FHLBank obtain the prior approval of the Finance Board before it may purchase or erect, or lease for a term of more than 10 years, a building to house the FHLBank. *See id.* section 1432(a); § 934.6(a)(2).

Six commenters supported the transfer of budget approval authority to the FHLBank boards. Almost uniformly, the commenters agreed that budget approval is a management function most appropriately administered at the individual FHLBank level, and that the budget proposal is consistent with Finance Board efforts to devolve management responsibilities to the FHLBanks.

The notice of proposed rulemaking specifically solicited comments on whether the final rule should include an efficiency standard to which FHLBank budgets should conform and, if so, what that standard should be. Four commenters strongly opposed the adoption of an efficiency standard. Commenters stated that no uniform efficiency measure could be set for the FHLBanks, given the diversity of their operations and operating philosophies. Two commenters noted that efficiency standards are already in place at the FHLBanks, where efficiency goals are required by stockholders, since inefficiency impacts net income and thus reduces dividend availability. Two FHLBanks also commented that a regulatory efficiency standard is not necessary because the Finance Board has sufficient supervisory authority to intervene if safety and soundness issues arise. It also was suggested that adopting such a standard would be inconsistent with the goal of separating the Finance Board's regulatory and governance responsibilities.

After considering the comments received, the Finance Board has decided not to incorporate a specific efficiency standard into the final rule. The Finance Board concurs that, considering the diversity of the FHLBanks, their districts, and their members, it would be difficult to establish a uniform efficiency standard that would recognize these differences while fairly measuring individual FHLBank efficiency. However, § 934.6(a)(1) of the final rule provides generally that, in adopting their budgets, the FHLBanks have a responsibility to protect both their members and the public interest by keeping their costs to an efficient and effective minimum.

Section 934.6(a)(3) of the final rule provides that the board of directors of a FHLBank may not delegate the authority to approve the annual budgets, or any subsequent amendments thereto, to FHLBank officers or other FHLBank employees.

Section 934.6(a)(4) of the final rule allows each FHLBank to determine the interest rate scenario it will use in preparing its annual budgets. This is a change from the current practice under which the Finance Board provides the interest rate scenario that the FHLBanks must use in preparing their budgets. The notice of proposed rulemaking specifically requested comments on whether an alternative approach for determining interest rate scenarios for FHLBank budgets, such as requiring the use of reported interest rates as of a fixed date specified in the regulation, would be preferable to the current approach. Six commenters addressed the issue. Comments focused on whether or not the Finance Board should determine interest rate scenarios for FHLBank budgets. One commenter supported Finance Board determination of a uniform interest rate scenario, believing that uniform interest rates for all FHLBanks would improve Finance Board monitoring capabilities, and would recognize potential risks of the FHLBank System's joint and several liability. Five FHLBanks opposed Finance Board determination of a uniform interest rate scenario. Commenters stated that interest rates set by the Finance Board generally lag behind the market, and budget procedures did not provide the Banks with enough flexibility to update their budgets based upon their own interest rate assumptions. One commenter raised the possibility that multiple budgets based on different interest rate scenarios, one established by the Finance Board and one by the FHLBank board, might need to be prepared. One commenter stated that involvement of the Finance Board in determining interest rates is inappropriate since it does not involve safety and soundness concerns.

After considering the comments received, the Finance Board has decided to provide the FHLBanks with the flexibility to determine their own interest rate scenarios when preparing annual budgets. The Finance Board believes that providing each FHLBank with the flexibility to update interest rates as it deems appropriate throughout the budget preparation process will improve the meaningfulness of FHLBank budgets. The Finance Board further believes that the benefits gained from this added flexibility will more than compensate for the lack of a FHLBank System-wide uniform interest rate scenario. Each FHLBank, however, will be required to provide to the Finance Board its interest rate assumptions. *See* § 934.6(b)(6).

Section 934.6(a)(5) of the final rule provides that a FHLBank may not exceed its total annual operating expense budget or its total annual capital expenditures budget without prior approval by the FHLBank's board of directors of an amendment to such budget.

B. Budget Reports—§ 934.6(b)

Section 934.6(b) of the final rule establishes specific FHLBank reporting requirements, certain of which are codified and streamlined from the Finance Board's current practice for FHLBank reporting.

Specifically, the FHLBanks are required to submit to the Finance Board, by January 31 of each year, in accordance with reporting formats and as further prescribed by the Finance Board, such FHLBank budgets and other financial information as the Finance Board shall require, including the following: (1) Balance sheet projections; (2) income statement projections, including operating expense budget data and staffing levels; (3) capital expenditures budget data; (4) management discussion of expected financial performance; (5) strategic or business plan; (6) interest rate assumptions; and (7) a copy of the FHLBank's board of directors resolution adopting the FHLBank's annual operating expense budget and capital expenditures budget.

One commenter recommended that the reporting requirements imposed on the FHLBanks should be limited to submissions of annual approved operating expenses and capital expenditures budgets. However, the Finance Board believes that the comprehensive collection of information on the Banks' financial plans provided for in the final rule, including balance sheet and income statement projections, enables the Finance Board to review FHLBank operating expenses and capital expenditures in context, and provides relevant information necessary to enable the Finance Board to carry out its supervisory oversight responsibilities over the FHLBanks.

C. Report on Amendments to Total Annual Budgets—§ 934.6(c)

Section 934.6(c) of the final rule requires a FHLBank to submit promptly to the Finance Board a copy of the FHLBank's board of directors resolution adopting any amendment increasing a FHLBank's total annual operating expense budget or total annual capital expenditures budget above originally approved budget limits.

One commenter recommended that only amendments increasing the total budget by 10 percent or more be required to be reported to the Finance Board. However, the Finance Board believes that any amendment of a Bank's total budget should be a rare occurrence which reflects a significant change that should be reported to the Finance Board. Accordingly, the commenter's recommendation is not adopted in the final rule.

D. Mid-year Reforecasting Report—§ 934.6(d)

Rather than requiring the current quarterly reports from the FHLBanks of reforecasted projections for the year relative to original budget projections, § 934.6(d) of the final rule requires each FHLBank to submit a mid-year report containing a balance sheet and income statement setting forth reforecasted projections for the year relative to the budget projections as originally approved or amended, including a management discussion explaining any significant changes.

E. Annual Actual Performance Results Report—§ 934.6(e)

Rather than requiring the current quarterly reports from the FHLBanks, which analyze actual performance results for the period relative to original budget projections, § 934.6(e) of the final rule requires each FHLBank to submit an annual report containing a balance sheet and income statement setting forth actual performance results for the year relative to the budget projections as originally approved or amended, including a management discussion explaining any significant changes.

III. Regulatory Flexibility Act

This final rule applies only to the FHLBanks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, section 601(6). Therefore, in accordance with the provisions of the RFA, the Board of Directors of the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. *Id.* section 605(b).

List of Subjects in 12 CFR Part 934

Federal home loan banks, Securities, Surety bonds.

Accordingly, the Board of Directors of the Finance Board hereby amends part 934, subchapter B of chapter IX, title 12, of the Code of Federal Regulations, as follows:

PART 934—OPERATIONS OF THE BANKS

1. The authority citation for part 934 is revised to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1432, 1442.

2. Section 934.6 is revised to read as follows:

§ 934.6 Budget preparation and reporting requirements.

(a) *Adoption of annual Bank budgets.* (1) Each Bank's board of directors shall be responsible for the adoption of an annual operating expense budget and a capital expenditures budget for the Bank, and any subsequent amendments thereto, consistent with the requirements of the Act, this section, other regulations and policies of the Board, and with the Bank's responsibility to protect both its members and the public interest by keeping its costs to an efficient and effective minimum.

(2) Pursuant to the requirement of section 12(a) of the Act (12 U.S.C. 1432(a)), a Bank must obtain prior approval of the Board before purchasing or erecting, or leasing for a term of more than 10 years, a building to house the Bank.

(3) A Bank's board of directors may not delegate the authority to approve the Bank's annual budgets, or any subsequent amendments thereto, to Bank officers or other Bank employees.

(4) A Bank's annual budgets shall be prepared based upon an interest rate scenario as determined by the Bank.

(5) A Bank may not exceed its total annual operating expense budget or its total annual capital expenditures budget without prior approval by the Bank's board of directors of an amendment to such budget.

(b) *Budget reports.* Each Bank shall submit to the Board, by January 31 of each year, in a format and as further prescribed by the Board, such Bank budgets and other financial information as the Board shall require, including the following:

(1) Balance sheet projections;

(2) Income statement projections, including operating expense budget data and staffing levels;

(3) Capital expenditures budget data;

(4) Management discussion of expected financial performance;

(5) Strategic or business plan;

(6) Interest rate assumptions; and

(7) A copy of the FHLBank's board of directors resolution adopting the FHLBank's annual operating expense budget and capital expenditures budget.

(c) *Report on amendments to total annual budgets.* A Bank shall submit promptly to the Board a copy of the Bank's board of directors resolution adopting any amendment increasing a Bank's total annual operating expense budget or total annual capital expenditures budget above originally approved budget limits.

(d) *Mid-year reforecasting report.* Each Bank shall submit to the Board, by July 31 of each year, in a format and as further prescribed by the Board, a report containing a balance sheet and income statement setting forth reforecasted projections for the year relative to the budget projections for that year as originally approved or amended, including a management discussion explaining any significant changes in the reforecasted projections from the budget projections as originally approved or amended.

(e) *Annual actual performance results report.* Each Bank shall submit to the Board, by January 31 of each year, in a format and as further prescribed by the Board, a report containing a balance sheet and income statement setting forth the actual performance results for the prior year relative to the budget projections for that year as originally approved or amended, including a management discussion explaining any significant changes in the actual performance results from the budget projections as originally approved or amended.

Dated: October 9, 1996.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 96–27817 Filed 10–29–96; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 96–ACE–16]

Amendment to Class E Airspace, Hays, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Hays Municipal Airport, Hays, KS. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Gobal Positioning System (GPS) which has made this change necessary. The effect of this rule is to provide additional controlled airspace for aircraft executing the new SIAP at Hays Municipal Airport.

DATES: *Effective date:* March 27, 1997.

Comment date: Comments must be received on or before December 30, 1996.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 96–ACE–16, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106, telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed a Standard Instrument Approach Procedure (SIAP) utilizing the Gobal Positioning System (GPS) at Hays Municipal Airport, Hays, KS. The amendment to Class E airspace at Hays, KS, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received, confirming the date on which the final rule will become effective. If the FAA does receive an adverse or negative comment within the comment period, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket Number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the comment's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ACE–16.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—AMENDED

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Hays, KS. [Revised]

Hays Municipal Airport, KS.

(Lat. 38°50′41.7″ N., long. 99°16′26.5″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Hays Municipal Airport and within 2.6 miles each side of the 005 radial of the Hays VORTAC extending from the 6.6-mile radius to 7.9 miles north of the airport and within 2.6 miles each side of the 169 radial of the Hays VORTAC extending from the 6.6-mile radius to 7.9 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on October 11, 1996.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 96–27879 Filed 10–29–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Docket No. 96–ACE–15]

Amendment to Class E Airspace, Lee's Summit, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Lee's Summit Municipal Airport, Lee's Summit, MO. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) which has made this change necessary. The effect of this rule is to provide additional controlled airspace for aircraft executing the new SIAP at Lee's Summit Municipal Airport.

DATES: *Effective date:* March 27, 1997.

Comment date: Comments must be received on or before December 31, 1996.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 96–ACE–15, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106: telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at Lee's Summit Municipal Airport, Lee's Summit, MO. The amendment to Class E airspace at Lee's Summit, MO, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received, confirming the date on which the final rule will become effective. If the FAA does receive an adverse or negative comment within the comment period, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule, Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket Number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commentor's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ACE–15.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—AMENDED

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g): 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Lee's Summit, MO. [Revised]

Lee's Summit Municipal Airport, MO.
(Lat. 38°57′35.1″ N., long. 94°22′17.7″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Lee's Summit Municipal Airport.

* * * * *

Issued in Kansas City, MO, on October 11, 1996.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 96–27878 Filed 10–29–96; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 303

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

[Docket No. 960508126–6126–01]

RIN 0625–AA46

Changes in Procedures for the Insular Possessions Watch Program

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: This action amends the ITA regulations, which govern duty-exemption allocations and duty-refund entitlements for watch producers in the United States' insular possessions (the Virgin Islands, Guam and American Samoa) and the Northern Mariana Islands. The amendments modify procedures for completion and use of the ''Permit to Enter Watches and Watch Movements into the Customs Territory of the United States'' (Form ITA–340); make the technical changes required by the passage of the Uruguay Round Agreements Act in 1994; eliminate the mid-year report (Form ITA–321P); change the percentage creditable towards the duty-refund of wages for non-91/5 watch and watch movement repairs and raise one of the percentages in the formula for calculating the duty-refund; revise the total quantity and respective territorial shares of insular watches and watch movements which would be allowed to enter the United States free of duty; remove from the percentage of non-91/5 wages creditable toward the duty-refund reference to watches and watch movements which are ineligible for duty-free treatment due only to value-limit reasons; raise the maximum value of components for watches; and make other changes necessary to consolidate and simplify the regulations.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: We published regulatory revisions in proposed form on July 22, 1996 (61 FR 37845) and invited comments. We received no comments.

Sec. 110 of Pub. L. No. 97–446 (96 Stat. 2331) (1983) as amended by Sec. 602 of Pub. L. No. 103–465 (108 Stat. 4991) (1994) additional U.S. Note 5 to chapter 91 of the HTS authorizes duty-exemption allocations and duty-refund entitlements for insular watch program producers. The following changes amend 15 CFR Part 303 of the regulations.

The procedures for completion and use of the ''Permit to Enter Watches and Watch Movements into the Customs Territory of the United States'' (Form ITA–340) are amended by revising Sec. 303.2(b)(3) and Sec. 303.7(b). The changes will reduce the paperwork associated with the permit, eliminate the need for Customs to mail a copy of the permit to the Department of Commerce for all Customs entries made electronically through the automated broker interface and allow required permit information to pass between the territorial government office and watch producers via facsimile, thereby eliminating the burden of travel to and from the territorial offices. Further details of the changes were set forth in our July 22, 1996 proposal (61 FR 37845).

Sec. 602 of Public L. 103–465 enacted on December 8, 1994 amended Pub. L. 97–446.

Authority: Sec. 303.1(a), Sec 303.2(a)(1) and Sec. 303.12(c)(2) are amended to reflect the new authority for the duty-refund entitlements for the insular watch program.

The mid-year report (Form ITA–321P) is eliminated by removing Sec. 303.2(b)(4) (Form ITA–321P) and Sec. 303.11 (mid-year reporting requirement). We also amended Sec. 303.6(f) to clarify the procedures for requesting annual supplemental allocations and relinquishing units. A major purpose of the mid-year report was to establish whether companies required more duty-exemption allocation or wished to relinquish duty-exemption that had been allocated. These purposes can be satisfied less formally and without paperwork.

We increased the percentage of wages for the repair of non-91/5 watches and watch movements creditable towards the duty-refund to a maximum of fifty percent of the firm's total creditable wages by amending Sec. 303.2(a)(13) and Sec. 303.14(c)(3). The increase permits producers to further diversify their operations.

Sec. 303.2(a)(13) is amended by removing eligibility towards the duty-refund for the assembly of non-91/5 watches and watch movements (ineligible only due to value-limit reasons). No duty-refunds have ever been issued on the basis of wages paid for the production of watches and watch movements because they exceeded regulatory value limits. Accordingly, we are eliminating this unused provision.

The Departments establish for calendar year 1997 a total quantity of 4,600,000 units in the following territorial shares:

Virgin Islands—3,100,000
Guam—500,000
American Samoa—500,000
Northern Mariana Islands—500,000

Sec. 303.14(b)(3) is amended by raising the maximum value of components for duty-free treatment of watches from $175 to $200. This change will relax the limitation on the value of imported components that may be used in the assembly of duty-free insular watches. The new value levels will contribute to offsetting the effects of the declining dollar and allow the producers wider options in the kinds of watches they assemble.

Sec. 303.14(c)(1)(iv) sets the incremental percentage for calculating that part of the duty-refund for producers who have shipped between 600,000 and 750,000 units free of duty into the United States. The value of the duty-refund is based on the producer's average creditable wages per unit shipped free of duty into the United States multiplied by a factor of 90% for the first 300,000 units and declining percentages in additional increments to a maximum of 750,000 units. The amendment raises the 65% increment to 75% and makes each declining percentage a 5% reduction. This change will add a further incentive for producers to increase shipments and possibly raise territorial employment.

The following amendments simplify and consolidate the regulations and eliminate redundancy:

- Remove the concluding text of Sec. 303.6(f), which required the publication of notices in the Federal Register to invite new entrants, and amend Sec. 303.8(c)(2), which also related to new entrant invitations (the regulations contain a standing invitation to new entrants in Sec. 303.14);
- Eliminate Sec. 303.10 (Limitations, requirements, restriction and prohibitions) and consolidate non-duplicative language in Sec. 303.14(b);
- Eliminate Sec. 303.11;
- Amend Sec. 303.12(b)(3) by changing registered mail to registered, certified or express carrier mail;
- Amend Sec. 303.12(c)(1) by changing the reference from Sec. 303.2(b)(6) to Sec. 303.2(b)(5), due to other changes affecting the numbering of provisions;
- Amend Sec. 303.14(b) by removing references to Sec. 303.10 and incorporating the non-duplicative language of Sec. 303.10 into Sec. 303.14(b); and
- Amend Sec. 303.14(c)(2) by replacing a reference to Sec. 303.10(c)(2) with the correct reference (Sec. 303.5(c)) and by removing Sec. 303.14(c)(3) as redundant.

Under the Administrative Procedure Act, 5 U.S.C. 553(d)(1), the effective date of this rule need not be delayed for 30 days because this rule relieves restrictions. The restrictions are relieved by raising the value-limit on watches which are allowed into the United States free of duty and raising an incremental percentage on which the duty-refund is calculated. The rule also relieves the burdensome travel time involved in obtaining the permit, reduces the paperwork involved with the permit and eliminates the burden of the mid-year report.

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Assistant General Counsel for Legislation and Regulation has certified to the Chief Counsel, Small Business Administration, that the rule will not have a significant economic impact on a substantial number of small entities. This is because the purpose and effect of the rulemaking is primarily to consolidate and simplify the regulations, make technical changes and reduce paperwork.

Paperwork Reduction Act. This rulemaking involves information collection activities subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. which are currently approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134. The amendments reduce the information burden on the public.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

It has been determined that the final rulemaking is not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, we are amending 15 CFR Part 303 as follows:

PART 303—[AMENDED]

1. The authority citation for 15 CFR Part 303 is revised to read as follows:

Authority: Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991.

§ 303.1 [Amended]

2. Section 303.1(a) is amended by removing the period at the end of the first sentence and adding ‘‘, and amended by Pub. L. 103–465, enacted 8 December 1994.’’.

§ 303.2 [Amended]

3. Section 303.2(a)(1) is amended by removing the period at the end of the sentence and adding ‘‘, as amended by Pub. L. 103–465, enacted on December 8, 1994, 108 Stat. 4991.’’.

4. In § 303.2, paragraphs (a)(13) and (b)(3) are revised to read as follows:

§ 303.2 Definitions and forms.

(a) * * *

(13) Creditable wages means all wages—up to the amount per person shown in § 303.14(a)(1)(i)—paid to permanent residents of the territories employed in a firm's 91/5 watch and watch movement assembly operations, plus any wages paid for the repair of non-91/5 watches up to an amount equal to 50 percent of the firm's total creditable wages. Excluded, however, are wages paid for special services rendered to the firm by accountants, lawyers, or other professional personnel and for the repair of non-91/5 watches and movements to the extent that such wages exceed the foregoing ratio. Wages paid to persons engaged in both creditable and non-creditable assembly and repair activities may be credited proportionately provided the firm maintains production and payroll

records adequate for the Departments' verification of the creditable portion.

* * * * *

(b) * * *

(3) *ITA–340 ''Permit to Enter Watches and Watch Movements into the Customs Territory of the United States.''* This form may be obtained, by producers holding a valid license, from the territorial government or may be produced by the licensee in an approved computerized format or any other medium or format approved by the Departments of Commerce and the Interior. The completed form authorizes duty-free entry of a specified amount of watches or watch movements at a specified U.S. Customs port.

* * * * *

5. In § 303.2, paragraph (b)(4) is removed and paragraphs (b)(5) and (b)(6) are redesignated as paragraphs (b)(4) and (b)(5).

§ 303.6 [Amended]

6. Section 303.6(f) introductory text is amended at the beginning of the second sentence by removing ''The'' and adding ''At the request of a producer, the''; and in the middle of the fourth sentence by removing ''invited'' and adding ''considered''.

7. In § 303.6, the concluding text of paragraph (f) is removed.

§ 303.7 [Amended]

8. Section 303.7 is amended by revising paragraph (b) to read as follows:

§ 303.7 Issuance of licenses and shipment permits.

* * * * *

(b) *Shipment Permit Requirements (ITA–340).* (1) Producers may obtain shipment permits from the territorial government officials designated by the Governor. Permits may also be produced in any computerized or other format or medium approved by the Departments. The permit is for use against a producer's valid duty-exemption license and a permit must be completed for every duty-free shipment.

(2) Each permit must specify the license and permit number, the number of watches and watch movements included in the shipment, the unused balance remaining on the producer's license, pertinent shipping information and must have the certification statement signed by an official of the licensee's company. A copy of the completed permit must be sent electronically or taken to the designated territorial government officials, no later than the day of shipment, for confirmation that the producer's duty-exemption license has not been exceeded and that the permit is properly completed.

(3) The permit (form ITA–340) shall be filed with Customs along with the other required entry documents to receive duty-free treatment unless the importer or its representative clears the documentation through Customs' automated broker interface. Entries made electronically do not require the submission of a permit to Customs, but the shipment data must be maintained as part of a producer's recordkeeping responsibilities for the period prescribed by Customs' recordkeeping regulations. U.S. Customs Service Import Specialists may request the documentation they deem appropriate to substantiate claims for duty-free treatment, allowing a reasonable amount of time for the importer to produce the permit.

§ 303.8 [Amended]

9. In § 303.8, paragraph (c)(2) is revised to read as follows:

§ 303.8 Maintenance of duty-exemption entitlements.

* * * * *

(c) * * *

(2) Reallocate the allocation or part thereof to a new entrant applicant; or

* * * * *

§ 303.10 [Removed and Reserved]

10. Section 303.10 is removed and reserved.

§ 303.11 [Removed and Reserved]

11. Section 303.11 is removed and reserved.

§ 303.12 [Amended]

12. Section 303.12(b)(3) introductory text is amended by adding, after the word ''registered'', the words '', certified or express carrier mail''.

13. Section 303.12(c)(1) is amended by removing from the first sentence ''§ 303.2(b)(6)'' and adding in its place ''§ 303.2(b)(5)''.

14. Section 303.12(c)(2) is amended at the end of the first sentence by removing the period and adding '', as amended by Public Law 103–465.''

§ 303.14 [Amended]

15. In § 303.14, the heading of paragraph (b) and paragraph (b)(1) and (b)(3) are revised and paragraph (b)(4) is added to read as follows:

§ 303.14 Allocation factors and miscellaneous provisions.

* * * * *

(b) *Minimum assembly requirements and prohibition of preferential supply relationship.* (1) No insular watch movement or watch may be entered free of duty into the customs territory of the United States unless the producer used 30 or more discrete parts and components to assemble a mechanical watch movement and 33 or more discrete parts and components to assemble a mechanical watch.

* * * * *

(3) Watch movements and watches assembled from components with a value of more than $35 for watch movements and $200 for watches shall not be eligible for duty-exemption upon entry into the U.S. Customs territory. Value means the value of the merchandise plus all charges and costs incurred up to the last point of shipment (i.e., prior to entry of the parts and components into the territory).

(4) No producer shall accept from any watch parts and components supplier advantages and preferences which might result in a more favorable competitive position for itself vis-a-vis other territorial producers relying on the same supplier. Disputes under this paragraph may be resolved under the appeals procedures contained in § 303.13(b).

* * * * *

16. Section 303.14(c)(1)(iv) is amended by removing ''65%'' and adding ''75%''.

17. Section 303.14(c)(2) is amended by removing ''§ 303.10(c)(2)'' and adding in its place ''§ 303.5(c)''.

18. Section 303.14(c)(3) is removed.

19. Section 303.14(e) is amended by removing ''3,600,000'' and adding in its place ''3,100,000''.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration, International Trade Administration, Department of Commerce.

Allen Stayman,

Director, Office of Insular Affairs, Department of the Interior.

[FR Doc. 96–27862 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P; 4310–93–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC07

Allow Lessees More Flexibility in Keeping Leases in Force Beyond Their Primary Term

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final rule amends regulations that specify how Outer

Continental Shelf (OCS) lessees can continue their leases beyond their primary term. Changes in industry exploration practices have increased the time necessary to collect and analyze data associated with operations. The changes increase from 90 to 180 days the time allowed between operations for a lease continued beyond its primary term.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence H. Ake or John Mirabella, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

On March 1, 1994, the Department of the Interior (DOT) published a notice in the Federal Register (59 FR 9718–9719), requesting comments and suggestions on DOI agency regulations. In its notice, DOI announced its intention to periodically review its regulations and asked the public to participate in the review. Over 40 responses were received concerning MMS regulations from the public, industry, and Government.

Several letters suggested that MMS make changes to Subpart A of 30 CFR Part 250. These comments proposed allowing 180 days between drilling, well-reworking, or other operations in order to keep a lease in effect beyond its primary term.

Commenters told MMS that although many OCS operations can be ended and recommenced within the present 90-day time allowance, many require considerably more time. The comments went on to say that the search for oil and gas resources in the OCS has reached a mature phase. Most of the easily found resources have been produced. Industry is now focusing its efforts in deeper waters, on subsalt projects, and other areas of extremely complex geology. The changes these commenters proposed would allow more time for efficient and expedient production, drilling, and well-reworking operations.

MMS held a public meeting in New Orleans on June 12, 1995, to discuss this and other issues. Based on the comments heard at that meeting, as well as those previously received, a notice of proposed rulemaking (NPR) was prepared for public comment. On April 25, 1996, an NPR was published in the Federal Register (61 FR 18309) which proposed to increase from 90 to 180 days the time allowed between operations for a lease continued beyond its primary term.

II. Discussion of the Rule

Under current MMS regulations (30 CFR 250.13 and 256.37(b)), if no production, drilling, or well-reworking activities occur on the lease during the last 90 days prior to lease expiration and no suspension of operations or production is in effect on the lease, the lease expires by law and lease term.

Current § 250.13 gives lessees several methods to keep leases in effect beyond their primary term. The most common method is through production of resources and payment of a royalty. Continuous drilling or well-reworking activities without a break of more than 90 days will also keep a lease in effect beyond its primary term. Other methods for extending a lease include receiving a suspension of production (30 CFR 250.10); a suspension of operations (30 CFR 250.10); or participation in a unit which has another lease that is being held beyond its primary term by one of these operations (30 CFR 250.190 (e) and (f)).

With this rulemaking, MMS increases from 90 to 180 days the time allowed between production, drilling, or well-reworking operations for leases continued beyond their primary term. For example, under the current rule if a lessee ceases production, drilling or well-reworking operations on a lease 60 days before the lease expiration date, he must resume operations within 90 days (i.e., within 30 days after the original lease expiration date). In this example, the new rule would allow the lessee 180 days (i.e., 120 days after the original lease expiration date) within which to resume operations.

Leases that have been continued past their primary term will remain in force as long as the break in operations is no longer than 180 days. This contrasts with 90 days provided by the current rule.

III. Discussion of Comments

Comment: MMS received 21 letters commenting on the NPR. Seventeen of the letters received were supportive of the proposed rule. Many of these comments cited how the extra time allowed would allow for better analysis of geological, geophysical, and engineering data. Others noted that the additional time would provide relief when analyzing subsalt or deepwater prospects. Still others spoke of the beneficial effects the rule would have when confronting time-consuming projects, such as working out cost-sharing arrangements with other operators or analyzing 3D seismic data.

Four letters provided comments that were critical of some aspect of the proposed rule. Two of these commenters supported the need of lessees and operators for more flexibility to keep their leases in effect, but felt that the extension of time to 180 days should be handled on a case-by-case basis. These commenters were concerned that the proposed rule could unnecessarily tie up some untested OCS acreage and thus slow the discovery of additional resources. One commenter opposed any open-ended authority for the Regional Supervisor to extend time limits beyond those in the proposed rule. Still another noted that the rule provides no assurance that the additional time granted to lessees will result in additional operations on the lease.

Response: One of the primary missions of the MMS is ensuring the orderly and expeditious exploration and development of the OCS. With this rule, we attempt to strike a balance between encouraging diligent operations and allowing proper time for lessees to evaluate their exploratory and development options. We agree with the majority of commenters that this rule change recognizes a need of industry. This extra time is frequently needed for detailed analysis of geological, geophysical, or engineering data. It also provides operators an opportunity to better evaluate deep-water and subsalt drilling prospects. However, the rule specifically states that any drilling or well-reworking program must be part of a plan that has as its objective continuous production on the lease. MMS intends to closely monitor the actions of lessees to ensure that this objective is met. MMS also fully expects that the 180 day timeframe will provide sufficient time for all but extraordinary delays. MMS will closely scrutinize all requests for more than 180 days between operations on leases beyond their primary term.

Comment: Another commenter suggested that a lease be extended for 180 days past the expiration date of the lease term if operations were conducted at any time during the last 180 days of the lease term. This commenter felt that this change would simplify the rule and help to avoid any misunderstanding of the time remaining on the lease.

Response: This comment was not accepted. MMS feels that the rule should be applied consistently, whether the lease is just passing its primary term or has previously been extended through continuous operations.

Comment: One of the comments was more editorial in nature. This comment pointed out that the wording in § 250.13(a)(2) of the NPR was ambiguous. The commenter also stressed that by changing to a ‘‘plain

English'' format, MMS may sacrifice clarity.

Response: The cited wording has been changed. MMS will attempt to write all of its rules as clearly as possible.

Executive Order (E.O.) 12866

This is a significant rule under E.O. 12866 and has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The DOI determined that this rule will not have a significant effect on a substantial number of small entities. In general, the entities that engage in offshore activities are not considered small due to the technical and financial resources and experience necessary to safely conduct such activities. Small entities are more likely to operate onshore or in State waters—areas not covered by this regulation. When small entities work in the OCS, they are more likely to be contractors than operators. For example, a company that collects geologic and geophysical data might be a small entity. While these contractors must follow the rules governing OCS operations, we are not changing the rules that govern the actual operations on a lease. We are only modifying the rules governing the extension of a lease beyond the primary term. The rule could have a secondary effect. By extending the time available to the lessee, more leases may be active and this could result in an increase in opportunities for small entities to collect data or perform other services. The added time could also work to benefit smaller companies who may have slower computers and could benefit from a longer time period for review of data.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no reporting and information collection requirements.

Takings Implication Assessment

The DOI determined that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, DOI does not need to prepare a Takings Implication Assessment pursuant to E.O. 12630, Government Action prepare a Takings Implication Assessment pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

Executive Order (E.O.) 12988

The DOI has certified to OMB that the rule meets the applicable reform standards provided in Sections 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandate Reform Act of 1995

The DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, tribal, State governments, or the private sector.

National Environmental Policy Act

The DOI determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statement, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: October 2, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, Minerals Management Service (MMS) amends 30 CFR Part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

2. Section 150.13 is revised to read as follows:

§ 250.13 How Does Production, Drilling, or Well-reworking Affect Your Lease Term?

(a) Your lease expires at the end of its primary term unless you are producing or conducting drilling or well-reworking operations on your lease. *See* § 256.37(b) of this title. Also, any drilling or well-reworking program must be part of a plan that has as its objective continuous production on the lease. For purposes of this section, the term ''operations'' means production, drilling, or well-reworking.

(b) If you stop conducting operations during the last 180 days of the primary lease term, your lease will remain in effect beyond the primary term only if you:

(1) Resume operations on the lease no later than 180 days after the operations ended; or

(2) Ask MMS for a suspension of operations or production under 30 CFR 150.10 before the 180th day after you stop operations, and thereafter receive the Regional Supervisor's approval; or

(3) Receive a directed suspension of operations or production from the Regional Supervisor under 30 CFR 250.10 before the 180th day after you stop operations.

(c) If you stop conducting operations on a lease that has continued beyond its primary term, then your lease will expire unless you comply with either paragraph (b)(1), (b)(2), or (b)(3) of this section.

(d) You may ask the Regional Supervisor to allow you more than 180 days to resume operations on a lease continued beyond its primary term when operating conditions warrant. The request must be writing and explain the operating conditions that warrant a longer period. In allowing additional time, the Regional Supervisor must determine that the longer period is in the national interest and that it conserves resources, prevents waste, or protects correlative rights.

[FR Doc. 96–27783 Filed 10–29–96; 8:45 am]

BILLING CODE 4310–MR–M

30 CFR Part 256

RIN 1010–AC15

Outer Continental Shelf Lease Terms

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the regulations governing the term for certain leases on the Outer Continental Shelf (OCS) based on water depth. This rule changes the current depth margins for 8-year leases from 400 to 900 meters to 400 to 800 meters while retaining the mandatory 5-year drilling requirement for all 8-year leases. The amendment allows the Minerals Management Service (MMS) to set lease terms of 8 to 10 years in water depths ranging from 800 to 900 meters. The intended effect of this rule is to simplify administration of OCS leases for the MMS and the lessees.

EFFECTIVE DATE: This final rule is effective on November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Judith M. Wilson, Engineering and Standards Branch, telephone (703) 787-1600.

SUPPLEMENTARY INFORMATION: Currently, MMS offers 10-year terms for leases in water depths of 900 meters or more. In water depths of 400 to 900 meters, MMS offers 8-year lease terms subject to a requirement that the lessee begin an exploratory well within the first 5 years, 30 CFR 256.37. On June 5, 1996, MMS published a notice of proposed rulemaking in the Federal Register (61 FR 28528). MMS proposed to amend its regulation at 30 CFR 256.37 to remove the requirement that the lessee must begin exploratory drilling within 5 years on 8-year leases. The proposed amendment also changed the 400 to 900 meter depth requirement for 8-year leases to 400 to 800 meters. MMS proposed this rule because, among other reasons, we considered the financial incentive established by the OCS Deep Water Royalty Relief Act (DWRRA) to be more effective than the drilling requirement as a means of achieving earlier drilling.

Comments

During the 60-day comment period, MMS received ten comments. Two-thirds of the comments came from the ‘‘major’’ oil companies. The remaining one-third of the comments came from ‘‘independents’’ and drilling contractors. Generally, the majors support the proposed rule and urged MMS to adopt the change before the September 25, 1996, Gulf of Mexico OCS lease sale. They agree that the recently enacted DWRRA serves as a more effective incentive to encourage earlier or expedited development and were confident operators will continue to be diligent in conducting exploratory drilling. They supported the change in water depth range for 8-year leases.

The independents and drilling contractors, however, strongly oppose the proposed rule maintaining that the drilling requirement is necessary to ensure diligence. While the DWRRA should provide a financial incentive to develop leases in water depths greater than 400 meters, MMS should use the 5-year drilling requirement as a safeguard to ensure that the Nation’s resources are produced in a timely manner. Finally, they claim that the myriad of smaller entities supporting the oil and gas industry have the greatest stake in the results of this rule which ought to be significant under E.O. 12866.

Response to Comments

MMS based the proposed rule on the observation that the 5-year drilling requirement has not resulted in meaningful, if any, increases in exploratory drilling. The data to support this observation comes from 8-year leases issued from 1985 to 1990. Leases issued at later dates were not analyzed because, at the time MMS initiated the proposed rule, it was too early to tell whether these leases would be drilled before the 5-year drilling window expired. In light of the independents’ strong opposition to the proposed rule, MMS will review the 5-year drilling requirement after we have more data from 8-year leases issued for several years subsequent to 1990. The analysis will allow MMS to view the statistics for time periods of declining and increasing exploratory drilling.

Thus, under the final rule, if your lease is in 400 to 800 meters of water, it will have an initial lease term of 8 years. You must begin an exploratory well within 5 years or the leases will be canceled. The final rule also gives MMS the flexibility to set an initial lease term between 8 and 10 years in water depths ranging from 800 to 900 meters. If MMS issues leases for more than 8 years in the 800 to 900 meter depth margin, the current mandatory drilling requirement for that depth margin would be eliminated. MMS does not believe that the longer lease and the lack of the drilling requirement will have a significant impact on smaller entities.

Leases in water depths less than 400 meters or more than 900 meters are not addressed in this rule. See 30 CFR 256.37(a)(1).

Author: This document was prepared by Judy Wilson, Engineering and Standards Branch, MMS.

Executive Order (E.O.) 12866

This rule is not a significant rule requiring Office of Management and Budget review under E.O. 12866.

Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this rule will not have a significant effect on a substantial number of small entities. Most entities that engage in offshore activities as operators are not small because of the technical and financial resources and experience necessary to conduct offshore activities. Small entities are more likely to operate onshore or in State waters—areas not covered by this rule. When small entities work in the OCS, they are more likely to be contractors rather than operators. For example, a company that collects geologic and geophysical data might be a small entity. While these contractors must follow rules governing OCS operations, we are not changing the rules that govern the actual operations of a lease. We are only modifying the provision setting the water depths at which particular primary terms apply. This modification will have no effect on small entities.

Paperwork Reduction Act

The final rule does not contain new information collection requirements that require approval by the Office of Management and Budget (OMB). The information collection requirements in 30 CFR part 256 are approved by OMB under approval No. 1010–0006. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

MMS estimates the public reporting burden for this information will average 3.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the information collection.

Takings Implication Assessment

The DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights, is not required.

Unfunded Mandate Reform Act of 1995

The DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, tribal, State governments, or the private sector.

E.O. 12988

The DOI has certified to OMB that the rule meets the applicable civil justice reform standards provided in Sections 3(a) and 3(b)(2) of E.O. 12988.

National Environmental Policy Act

MMS has examined the rule and has determined that it does not constitute a major Federal action significantly affecting the quality of the human environment pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)).

List of Subjects in 30 CFR Part 256

Administrative practice and procedures, Continental shelf, Environmental Protection, Government contracts, Mineral royalties, Oil and gas exploration, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: October 21, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, the Minerals Management Service amends 30 CFR part 256 as follows:

PART 256—LEASING OF SULPHUR OR OIL OR GAS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 256 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In § 256.37, the concluding text of paragraph (a) is removed, paragraph (a)(2) is revised, and paragraph (a)(3) is added to read as follows:

§ 256.37 Lease Term.

(a) (1) * * *

(2) If your oil and gas lease is in water depths between 400 and 800 meters, it will have an initial lease term of 8 years unless MMS establishes a different lease term under paragraph (a)(1) of this section.

(3) For leases issued with an initial term of 8 years, you must begin an exploratory well within the first 5 years of the term to avoid lease cancellation.

* * * * *

[FR Doc. 96–27782 Filed 10–29–96; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN65–1–7288a; FRL–5613–4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 21, 1995, and February 14, 1996 the State of Indiana submitted a State Implementation Plan (SIP) revision request to the Environmental Protection Agency (EPA) establishing regulations for wood furniture coating operations in Clark, Floyd, Lake, and Porter Counties, as part of Clark and Floyd Counties' 15 percent (%) Rate-of-Progress (ROP) plan control measures for Volatile Organic Compound (VOC) emissions, and the State's requirement to develop post-1990 Control Techniques Guidelines (CTG) Reasonably Available Control Technology (RACT) rules for the four counties. These regulations require wood furniture coating facilities which have the potential to emit at least 25 tons of VOC per year to use coatings which meet a certain VOC content limit or add on controls that are capable of achieving an equivalent reduction. The rule also specifies work practices and training requirements that must be implemented for the wood working operations. Indiana expects that this rule will reduce VOC emissions by approximately 2,445 pounds per day in Clark and Floyd Counties. No wood furniture coating operations have been identified in Lake or Porter Counties at this time.

DATES: This action is effective on December 30, 1996, unless EPA receives adverse or critical comments by November 29, 1996. If the effective date is delayed, timely notification will be published in the Federal Register.

ADDRESSES: Copies of the revision request are available for inspection at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Francisco J. Acevedo at (312) 886–6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo at (312) 886–6061.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Clean Air Act (the Act) requires all ozone nonattainment areas which are classified as ''moderate'' or worse to achieve a 15% reduction of 1990 emissions of VOC by 1996. In Indiana, Lake and Porter Counties are classified as ''severe'' nonattainment for ozone, while Clark and Floyd Counties are classified as ''moderate'' nonattainment. As such, these areas are subject to the 15% ROP requirement. Section 182(b)(2)(A) of the Act further requires States with moderate or worse ozone nonattainment areas to submit a SIP revision establishing RACT requirements for each source category covered by a CTG issued by EPA between November 15, 1990, and the date of area attainment. Under this provision, the State must submit these SIP revisions within the period established in the relevant CTG document. Section 183 of the Act required that EPA publish CTG documents for thirteen source categories not already covered by a CTG by November 15, 1993.

On April 28, 1992, the EPA published a supplement to the General Preamble for the Implementation of Title I of the 1990 Amendments to the Act (57 FR 18069), which listed 13 source categories to be covered by a post-enactment CTG document. One of these source categories is wood furniture coating. This supplemental document also noted that the EPA would not be able to publish all CTGs required by the Act by the November 15, 1993 deadline, and therefore states may delay adoption of RACT rules for forthcoming CTG source categories. However, it specifies that if the CTGs are not completed on time, the states are to develop and submit RACT rules for these categories by November 15, 1994. After an extensive regulatory negotiation with industry, EPA issued a draft CTG for wood furniture coating in August, 1995 which was released on May 20, 1996 as a final CTG. As part of the final CTG, a model rule for wood furniture finishing and cleaning operations was also released.

The emission points covered in the CTG are the finishing, cleaning, and washoff operations. The finishing operation includes the finishing application area, flashoff areas, curing ovens, and assorted cooldown zones. Emissions can occur throughout the entire finishing operation. Finishing operation-related cleaning includes application equipment cleanup, process equipment cleaning, and spray booth cleaning. Cleaning operations occur primarily in the application area, though miscellaneous cleaning operations may occur along any part of the finishing operation. Washoff operations are also covered by the model rule. Washoff includes the removal of finishing material from a piece of furniture that does not meet specifications.

The selected RACT contains two elements: emission standards limiting the VOC content of coatings and work practice standards. The VOC content should be calculated as applied to account for in-house dilution of coatings purchased from an outside source. To incorporate some flexibility, the model rule allows sources to use either an averaging approach or add-on air pollution control equipment to meet the RACT requirements. To use an add-on control device, the source must demonstrate, through the use of a series of calculations, that the source is achieving an emission reduction equivalent to that achieved by sources using compliant coatings.

Sources using an averaging approach must demonstrate that their emissions are no greater than 90 percent of the emissions that would result from the use of compliant coatings. Section B.4(a)(4) of the model rule provides guidance on how to determine if the source is achieving the required emission reduction. The model rule contains extensive guidance for states which decide to allow averaging as a method of demonstrating compliance. However, states have the option of not incorporating an averaging mechanism into their rules. States may also place limitations on the averaging program if they wish to do so. For example, a state may limit averaging to facilities of a certain size, limit the number of coatings subject to averaging, or limit the amount of time a source could use averaging in anticipation that, in the future, compliant coatings may be available for every situation.

The baseline for each finishing material included in the averaging program shall be the lower of the actual or allowable emission rate as of the effective date of the State's RACT rule. For example, assuming a limit of 0.8 lb VOC/lb solids, if a source is already using a 0.3 lb VOC/lb solids topcoat, it is not entitled to any sort of credit for the 0.5 lb VOC/lb solids difference. Methods used in determining the usage of each finishing material shall be accurate enough to ensure that the affected source's actual emissions are less than the allowable emissions.

On May 3, 1995, the Indiana Air Pollution Control Board (IAPCB) adopted the Wood Furniture Coatings rule. Public hearings on the rule were held on March 1, 1995, and May 3, 1995, in Indianapolis, Indiana. The rule was signed by the Secretary of State on December 5, 1995, and became effective on January 4, 1996; it was published in the Indiana Register on February 1, 1996. Indiana Department of Environmental Management (IDEM) formally submitted the Wood Furniture Coatings rule to EPA on November 21, 1995, as a revision to the Indiana SIP for ozone; supplemental documentation to this revision was submitted on February 14, 1996. EPA made a finding of completeness in a letter dated February 23, 1996.

II. Analysis of State Submittal

The submittals include the following new or revised rules:

326 Indiana Air Code (IAC) 8–11 Wood Furniture Coatings

In order to determine the approvability of the Indiana Wood Furniture Coating SIP revision, the State rule was reviewed for enforceability and consistency with the model rule found in the draft and final CTG for Wood Furniture Coating. A discussion of the rule and EPA's analysis follows:

8–11–1 Applicability

This section establishes which facilities are subject to the Indiana wood furniture coating rules. Subject facilities include all sources in Clark, Floyd, Lake, and Porter Counties which have the potential to emit at least 25 tons of VOC per year and are classified under any of the following Standard Industrial Classification (SIC) codes: 2434 (wood cabinets), 2511 (wood household furniture, including tables, beds, chairs, and unupholstered sofas), 2512 (upholstered wood household furniture), 2517 (wood television, radios, phonographs, and sewing machine cabinets), 2519 (household furniture, not elsewhere classified), 2521 (wood office furniture), 2531 (public building and related furniture), 2541 (wood office and store fixtures, partitions, shelving, and lockers), 2599 (furniture and fixtures and any other coated furnishings made of solid wood, wood composition, or simulated wood material not elsewhere classified). The applicability section of the Indiana rule is generally consistent with EPA's model rule for wood furniture finishing and cleaning operations and is therefore approvable.

8–11–2 Definitions

This section establishes definitions for 42 terms used throughout the State rule. The definitions section of the Indiana rule accurately describes the specified terms and is generally consistent with EPA's model rule for wood furniture finishing and cleaning operations. The Indiana rule does not define additional terms found in the model rule that are also used in the State rule. However, the lack of these definitions does not appear to create a conflict in the rule nor does it weaken the interpretation of the rule. This section is therefore approvable.

8–11–3 Emission Limits

This section requires that on or after January 1, 1996, each facility subject to the rule must limit VOC emissions from finishing operations by complying with one of the following options: (1) Using as-applied topcoats with a VOC content limit of 0.8 kg VOC/kg solids (0.8 lb VOC/lb solids); (2) Using a finishing system of sealers with a VOC content limit of 1.9 kg VOC/kg solids (1.9 lb VOC/lb solids), as applied and topcoats with a VOC content limit of 1.8 kg VOC/kg solids (1.8 lb VOC/lb solids), as applied; (3a) For sources using acid-cured alkyd amino vinyl sealers and acid-cured alkyd amino conversion varnish topcoats the sealer is to contain no more than 2.3 kg VOC/kg solids (2.3 lb VOC/lb solids), as-applied, and the topcoat no more than 2.0 kg VOC/kg solids (2.0 lb VOC/lb solids), as-applied; (3b) For sources using a sealer other than an acid-cured alkyd amino vinyl sealer and acid-cured amino conversion varnish topcoats, the sealer is to contain no more than 1.9 kg VOC/kg solids (1.9 lb VOC/lb solids), as-applied, and the topcoat is to contain no more than 2.0 kg VOC/kg solids (2.0 lb VOC/lb solids), as applied; (3c) For sources using an acid-cured alkyd amino vinyl sealer and a topcoat other than an acid-cured alkyd amino conversion varnish topcoat, the sealer is to contain no more than 2.3 kg VOC/kg solids (2.3 lb VOC/lb solids), as-applied, and the topcoat is to contain no more than 1.8 kg VOC/kg solids (1.8 lb VOC/lb solids), as applied.

As an alterative to meeting these coating limits, the rule allows regulated sources to use either a control system that achieves an equivalent reduction in emissions as calculated using specified compliance procedures in section 6(a)(2) of the rule, or an emissions averaging approach which must demonstrate that emissions reductions from the finishing materials are at least 10% greater than would be achieved by use of compliant coatings to meet the coating limits. Section 3(a)(4) establishes the equations, based upon those developed in the CTG's model rule, to demonstrate compliance with the rule through emissions averaging, and sources using an averaging approach must meet additional requirements as provided for in section 10.

To limit VOC emissions from cleaning operations, section 3(b) requires that wood furniture coating facilities meet a VOC content limit of 0.8 kg VOC/kg solids (0.8 lb VOC/lb solids), for strippable booth coatings, as applied. The emission limits section of the Indiana rule follows the approach recommended in the EPA model rule and is therefore approvable.

8–11–4 Work Practice Standards

This section requires that certain work practices be followed. On or after

July 23, 1995, all equipment is to be maintained according to the manufacturer's specifications; all fresh or used solvent must be kept in closed containers; all organic solvents used for line cleaning must be pumped or drained into a closed container; and all finishing materials and cleaning materials must also be stored in closed containers. In addition, closed tanks are required to be used for washoff operations, and during washoff operations dripping of components must be minimized by tilting or rotating the part to drain as much organic solvent as possible. Further, sources are not to use organic solvents containing more than 8% by weight of VOC for cleaning spray booth components other than conveyors, continuous coaters and their enclosures, or metal filters, except during refurbishing of the spray booth. If the spray booth is being refurbished, that is, the spray booth coating or material used to cover the booth is being replaced, no more than 1 gallon of organic solvent shall be used to clean the booth. Conventional air spray guns are prohibited under the rule except under certain circumstances specified under section 4(c).

On or after May 1, 1996, wood furniture coating operations must clean spray guns using an enclosed device which minimizes solvent evaporation, recirculates solvent for reuse, and collects solvent for proper disposal or recycling. Sources must also implement a written leak inspection and maintenance plan which meets criteria specified in section 4(g). A cleaning and washoff solvent accounting system must be implemented, by means of maintaining forms that record the quantity and type of organic solvent used each month for washoff and cleaning, the number of pieces washed off, and the reason for the washoff, and the quantity of spent solvent generated from each activity that is recycled on-site or disposed off-site each month. Finally, sources must implement a written and hands-on annual training program which at a minimum will cover applicable application techniques, cleaning procedures, equipment setup and adjustment to minimize finishing material usage and overspray, and management of clean-up wastes. Records of such training programs shall be kept on-site for at least three years. The work practice standards section is consistent with EPA's model rule for wood furniture finishing and cleaning operations and is therefore approvable.

8–11–5 Continuous Compliance Plan

This section requires that on or before May 1, 1996, each owner or operator of a subject facility must submit to IDEM a continuous compliance plan (CCP) which shall address, at a minimum, the work practice requirements specified in section 4 of the rule. Further, the CCP should include a statement signed by a responsible official certifying that the facility is in compliance with the control requirements of section 3 and the work practice standards of section 4. A copy of the CCP shall be maintained on site and shall be available for inspection. If IDEM determines the CCP is inadequate, IDEM shall require the CCP to be modified appropriately. The continuous compliance plan section is consistent with EPA's model rule for wood furniture finishing and cleaning operations and is therefore approvable.

8–11–6 Compliance Procedures and Monitoring Requirements

This section requires sources subject to the emission limits in the State rule to demonstrate compliance with those limits by using any of the following methods: (1) To support that each sealer, topcoat, and strippable booth coating meets the requirements of the emission limits section, the sources are required to maintain documentation that uses EPA Method 24 data, or data from an equivalent method, to determine the VOC and solids content of the as-supplied finished material. If solvents or other VOC are added to the finishing material before application, the source is required to maintain documentation showing the VOC content of the finishing material as-applied, in kilograms of VOC per kilograms of solids. (2) To comply through the use of a control system, sources are required to determine the overall control efficiency needed to demonstrate compliance using the overall control efficiency equation provided in the rule for the specific capture system and control devices employed by the source. Sources are also required to document that the actual or daily weighted average VOC content used in the overall control efficiency equation is obtained from the VOC and solids content of the as-applied finishing material. In addition, sources will need to calculate the overall efficiency of the capture system and control device, using the procedures described in the test procedures section of the rule, and demonstrate that the value of the overall control efficiency thus estimated is equal or greater than the value of the overall control efficiency calculated by the overall control efficiency equation.

Initial compliance with the rule is to be met as follows. (1) Sources subject to the provisions of section 3(a)(1) through 3(a)(3) or 3(b) which are complying through the procedures established in section 6(a)(1) are to submit an initial compliance status report, as required by the continuous compliance plan and reporting requirements sections of the rule, stating that compliant sealers and topcoats and strippable booth coatings are being used in the wood furniture manufacturing operations. (2) Sources subject to the coating limit provisions of section 3 that are complying through the procedures established in subsection (a)(1) and are applying sealers and topcoats using continuous coaters are required to demonstrate initial compliance by either of the following two options: (a) By submitting an initial compliance status report stating that compliant sealers and topcoats, as determined by the VOC content of the finishing material in the reservoir and the VOC content as calculated from records, are being used; or (b) By submitting an initial compliance status report stating that compliant sealers or topcoats, as determined by the VOC content of the finishing material in the reservoir, are being used and the viscosity of the finishing material in the reservoir is being monitored. The source is also required to provide data that demonstrate the correlation between viscosity of the finishing material and the VOC content of the finishing material in the reservoir. (3) Sources using a control system or capture or control device to comply with the requirements of this rule, as allowed in the emission limits section of the State rule and subsection (a)(2), are required to demonstrate initial compliance by doing the following on or before January 1, 1996: Conducting an initial compliance test using the procedures and test methods listed in the test procedures section of the rule; calculating the overall control efficiency; determining those operating conditions critical to determining compliance and establishing operating parameters that will ensure compliance with the standards; and submitting a monitoring plan that identifies the operating parameter to be monitored for the capture device and discusses why the parameter is appropriate for demonstrating ongoing compliance. In addition, this subsection requires sources complying with this subsection to calculate the site-specific operating parameter value as the arithmetic average of the maximum or minimum operating parameter values, as appropriate, that demonstrate compliance with the standards, during the initial compliance test required in subsection (c)(3)(A)(iv) of the rule. (4)

This section also states that sources subject to the CCP requirements of the rule are required to submit an initial compliance status report, as required by the reporting requirements section of the rule, stating that the CCP has been developed and procedures have been established for implementing the provisions of the plan.

The Indiana rule states that continuous compliance must be demonstrated as follows: (1) Sources that are complying through the procedures established in subsection (a)(1) shall demonstrate continuous compliance by using compliant materials, maintaining records that demonstrate the finishing materials are compliant, and submitting a compliance certification with the semiannual report required by section 9(c) of this rule. (2) Sources that are complying through the procedures established in subsection (a)(1) and are applying sealers and topcoats using continuous coaters shall demonstrate continuous compliance by use of the following procedures: (A) Using compliant materials, as determined by the VOC content of the finishing material in the reservoir and the VOC content as calculated from records, and submitting a compliance certification with the semiannual report required by section 9(c) of the rule; (B) Using compliant materials, as determined by the VOC content of the finishing material in the reservoir, maintaining a viscosity of the finishing material in the reservoir that is no less than the viscosity of the initial finishing material by monitoring the viscosity with a viscosity meter or by testing the viscosity of the initial finishing material and retesting the material in the reservoir each time solvent is added, maintaining records of solvent additions, and submitting a compliance certification with the semiannual report required by section 9(c) of the rule. (3) Sources that are complying through the use of a control system or a capture or control device are required to demonstrate continuous compliance by complying with the control system operation, maintenance, and testing, and control system monitoring, record keeping, and reporting requirements stated in this section of the rule. (4) Sources subject to the continuous compliance plan requirements in section 5 are required to demonstrate continuous compliance by following the provisions of the CCP and submitting a compliance certification with the semiannual report required by the reporting requirements section of the rule. The compliance procedures and monitoring requirements section is consistent with EPA's model rule for wood furniture finishing and cleaning operations and is therefore approvable.

8–11–7 Test Procedures

This section provides that compliance with the rule's emission coating limits will be determined by the procedures and methods contained in 326 IAC 8–1–4 and 40 CFR Part 60, Appendix A. The former contains the State's testing provisions, while the latter contains EPA's Method 24. If it is demonstrated to the satisfaction of IDEM and EPA that a finishing material does not release VOC by-products during the cure, (for example, all VOC is solvent), then batch formulation information shall be accepted. In the event of any inconsistency between an EPA Method 24 test and a facility's formulation data, that is, if the EPA Method 24 value is higher, the EPA Method 24 shall govern. Compliance through the use of a control system shall be demonstrated initially by demonstrating that the overall control efficiency determined by using procedures in 326 IAC 8–1–4 and 40 CFR 60, Appendix A is at least equal to the required overall control efficiency determined by using the equation in section 6(a)(2)(A). All tests required in this section are to be conducted according to the protocol developed in consultation with IDEM. The test procedures section is consistent with EPA's model rule for wood furniture finishing and cleaning operations and is therefore approvable.

8–11–8 Record Keeping Requirements

This section requires that the owner or operator of a source subject to the Indiana rule maintain the following records as part of this program: A list of each of the finishing material and strippable booth coating subject to the emission limits of the rule; the VOC and solids content, as applied, of each finishing material and strippable booth coating subject to the emission limits of the rule; and copies of data sheets documenting how the as-applied values were determined.

In addition, the owner or operator of a Source following the compliance procedures of section 6(c)(2) shall maintain records required by subsection (a), viscosity measurements, and daily records of solvent and finishing material additions to the continuous coater reservoir. Sources following the compliance method of section 6(a)(2) in addition to complying with the record keeping requirements of section 6(c)(3)(B) shall maintain the following records: Copies of the calculations to support the equivalency of using a control system, as well as the data necessary to support the calculation of the required overall efficiency and actual determined control efficiency; and records of the daily average value of each continuously monitored parameter for each operating day.

Sources subject to the work practice standards in section 4 of the State rule are to maintain on-site the CCP and all records associated with fulfilling the requirements of that plan, including, but not limited to the following: Records demonstrating compliance with the operator training program; records maintained in accordance with the leak inspection and maintenance plan; records associated with cleaning solvent accounting system; records associated with the limitation on the use of conventional air spray guns showing total finishing material usage and the percentage of finishing materials applied with conventional air spray guns for each semiannual reporting period; records showing the VOC content of solvent used for cleaning booth components, except for solvent used to clean conveyors, continuous coaters and their enclosures, or metal filters; and copies of logs and other documentation developed to demonstrate that the other provisions of the CCP are followed. All records under this rule are to be maintained for a minimum period of three years. Failure to maintain the records constitutes a violation of the rule for each day records are not maintained. The record keeping requirements section is consistent with EPA's model rule for wood furniture finishing and cleaning operations and is therefore approvable.

8–11–9 Reporting Requirements

On or before May 1, 1996, owners or operators of wood furniture manufacturing operation are to submit the following information to IDEM: the continuous compliance plan required by section 5 of the State rule and the initial compliance report for sources using add-on controls as required by section 6(b)(3) of the rule. Sources demonstrating compliance in accordance with section 6(a)(1) or 6(a)(2) of the rule are to submit a semiannual report covering the previous six months of operation. The first report is to be submitted 30 calendar days after the end of the first six (6) month period following the compliance date. Subsequent reports are to be submitted within 30 calendar days after the end of each six month period following the first report. Each semiannual report shall include: the information required by section 6(c); a statement of whether the operation was in compliance or noncompliance; and if the operation was not in compliance, the measures taken to bring the source into compliance. The reporting requirements section is consistent with EPA's model rule for wood furniture finishing and cleaning operations and is therefore approvable.

8–11–10 Provisions for Sources Electing To Use Emissions Averaging

This section provides that sources electing a program to comply with the emission standard via averaging equations need to submit to IDEM, a plan addressing the following provisions detailed in the rule: Program goals and rationale; program scope; for program baseline, each finishing material included in the averaging program shall be the lower of the actual or allowable emission rate as of the effective date of this rule; quantification procedures; and monitoring, record keeping, and reporting. In addition, this section states that pending approval by IDEM and EPA of a proposed emissions averaging plan, the source is to continue to comply with the provisions of the rule. The provisions for sources electing to use emissions averaging section is consistent with EPA's model rule for wood furniture finishing and cleaning operations and is therefore approvable.

Enforcement

The Indiana Code (IC) 13–7–13–1, states that any person who violates any provision of IC 13–1–1, IC 13–1–3, or IC 13–1–11, or any regulation or standard adopted by one of the boards (i.e., Indiana Air Pollution Control Board), or who violates any determination, permit, or order made or issued by the commissioner (of Indiana Department of Environmental Management) pursuant to IC 13–1–1, or IC 13–1–3, is liable for a civil penalty not to exceed twenty-five thousand dollars per day of any violation. Because this submittal is a regulation adopted by the IAPCB, a violation of which subjects the violator to penalties under IC 13–7–13–1, and because a violation of the ozone SIP would also subject a violator to enforcement under section 113 of the Act by EPA, EPA finds that the submittal contains sufficient enforcement penalties for approval. In addition, IDEM has submitted a civil penalty policy document which accounts for various factors in the assessment of an appropriate civil penalty for noncompliance with IAPCB rules, among them, the severity of the violation, intent of the violator, and frequency of violations. EPA finds these criteria sufficient to deter non-compliance and is therefore approvable.

III. Final Rulemaking Action

Indiana's rules for wood furniture finishing and cleaning operations are generally consistent with EPA's guidance in the Act for this category and are therefore considered to constitute RACT. EPA therefore approves these rules in 326 Indiana Air Code (IAC) 8–11 that were submitted on November 21, 1995, and February 14, 1996.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 30, 1996 unless, by November 29, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 30, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United

States Court of Appeals for the appropriate circuit by December 30, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 5, 1996.

William E. Muno,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.770 is amended by adding paragraph (c)(114) to read as follows:

§ 52.770 Identification of Plan.

* * * * *

(c) * * *

(114) On November 21, 1995, and February 14, 1996, Indiana submitted regulations for wood furniture coating operations in Clark, Floyd, Lake, and Porter Counties as a revision to the State Implementation Plan for ozone.

(i) Incorporation by reference. 326 Indiana Administrative Code 8–11 Wood Furniture Coatings, Section 1 Applicability, Section 2 Definitions, Section 3 Emission limits, Section 4 Work practice standards, Section 5 Continuous compliance plan, Section 6 Compliance procedures and monitoring requirements, Section 7 Test procedures, Section 8 Recordkeeping requirements, Section 9 Reporting requirements, Section 10 Provisions for sources electing to use emission averaging. Adopted by the Indiana Air Pollution Control Board May 3, 1995. Filed with the Secretary of State December 5, 1996. Published at Indiana Register, Volume 19, Number 5, February 1, 1996. Effective January 4, 1996.

[FR Doc. 96–27607 Filed 10–29–96; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 52

[LA–37–1–7320, TX–75–1–73199; FRL–5629–7]

Approval and Promulgation of Air Quality Plans, Texas and Louisiana; Revision to the Texas and Louisiana State Implementation Plans Regarding Negative Declarations for Source Categories Subject to Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Section 172(c)(1) of the Clean Air Act (the Act) requires nonattainment areas to reduce emissions from existing sources by adopting, at a minimum, reasonably available control technology (RACT). The EPA has established 13 source categories for which RACT must be implemented and issued associated Control Technique Guidelines (CTGs) or Alternate Control Techniques (ACTs) documents. If no major sources of volatile organic compound (VOC) emissions in a particular source category exist in a nonattainment area, a State may submit a negative declaration for that category. Louisiana has submitted negative declarations for certain source categories in the Baton Rouge ozone nonattainment area. Texas has submitted negative declarations for certain source categories in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. The EPA is approving these negative declarations for Louisiana and Texas.

DATES: This action is effective on December 30, 1996, unless notice is postmarked by November 29, 1996, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the States' submittals and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733

Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Blvd., Baton Rouge, LA 70810

Texas Natural Resource Conservation Commission (TNRCC), Office of Air Quality, 12124 Park 35 Circle, Austin, TX 78753.

Anyone wishing to review this submittal at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

I. Background

Section 172(c)(1) of the Act requires nonattainment area State Implementation Plans (SIPs) to provide, at a minimum, for such reductions in emissions from existing sources in the areas as may be obtained through the adoption of reasonably available control measures including RACT. In the notice at 44 FR 53761 (September 17, 1979) the EPA defines RACT as: ''The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economical feasibility.''

Furthermore, section 182(b)(2)(A) of the Act requires that States shall submit a revision to the applicable implementation plan to include provisions to require RACT implementation for each category of VOC sources in the area covered by a CTG document issued by the Administrator after November 15, 1990. This section applies to sources only in moderate and above ozone nonattainment areas. In addition, section 182(b)(2)(C) requires that States adopt RACT for all other major sources, i.e. non-CTG major sources, in the ozone nonattainment areas by November 15, 1992. In appendix E of the General Preamble to title I (57 FR 13948), the EPA identified 11 CTGs that it intended to issue. The EPA is also specifically required to issue CTGs for aerospace coatings and shipbuilding and repair for a total of 13 CTGs. The 11 additional CTGs are listed below:

1. Synthetic organic chemical manufacturing industry (SOCMI) distillation
2. SOCMI reactors
3. Wood furniture
4. Plastic parts coating (business machines)

5. Plastic parts coating (other)
6. Offset lithography
7. Industrial wastewater
8. Autobody refinishing
9. SOCMI batch processing
10. Volatile organic liquid storage tanks
11. Clean up solvents

Appendix E explained that States could delay adoption of measures for major sources in those 13 categories until the EPA has provided the CTG. Appendix E also explained that if the EPA failed to issue the CTG by November 15, 1993, then the required RACT submittal for major sources in the 13 categories under 182(b)(2)(C) was due November 15, 1994. The EPA issued CTGs for two source categories: SOCMI reactors and SOCMI distillation. For the other eleven categories, the EPA issued ACT guidelines for States to use in developing the required measures. ACT documents contain information on emissions, controls, control options, and costs that States can use in developing rules based on RACT. ACT documents present options only, and do not contain a recommendation on RACT.

As stated previously, where there are no major sources of VOC emissions in a CTG or ACT source category in a nonattainment area, the States can provide the EPA with a negative declaration instead of developing control measures. Louisiana and Texas have submitted their negative declarations for the categories where no sources were identified. Texas and Louisiana made determinations that no major sources existed in certain categories by researching the State databases. The EPA verified the States' assertions by researching its Aerometric Information Retrieval System database.

It should be noted that, subsequent to the States' submittals, the EPA issued the wood furniture CTG in May 1996 pursuant to section 182(b)(2)(A) of the Act. Unlike section 182(b)(2)(C) of the Act, which only calls for controlling major sources, a CTG issued under section 182(b)(2)(A) can call for controlling both major and minor sources if it proves to be reasonable. Therefore, Texas and Louisiana will now have to reevaluate the previously submitted negative declarations for wood furniture to determine if any of these smaller sources are located in the nonattainment areas.

II. Analysis of the Submittals

Louisiana

On December 15, 1995, Louisiana submitted a SIP revision to address all of the CTG/ACT source categories for the Baton Rouge serious ozone nonattainment area and the Calcasieu Parish marginal ozone nonattainment area. The plan includes regulations for six of the thirteen CTG/ACT categories and negative declarations for the remaining seven categories. The seven categories are offset lithography, plastic parts coatings-business machines, plastic part coatings-others, wood furniture, aerospace coatings, autobody refinishing, and shipbuilding and repair.

In this action, the EPA is approving only the Baton Rouge Parish negative declarations as revisions to the SIP. As stated earlier, section 182(b)(2) applies to moderate and above ozone nonattainment areas. Since Calcasieu Parish is classified as marginal, the EPA is not acting upon the negative declarations for that parish at this time. In addition, the regulations included in the plan will be acted upon in a future rulemaking.

Texas

On January 10, 1996, Texas submitted a SIP revision intended in part to address RACT requirements for the 13 source categories. This submittal included the negative declarations for some categories and demonstrations that existing rules constitute RACT for other categories. In this action, the EPA is approving only the negative declarations contained in the submittal.

For the Beaumont/Port Arthur region, negative declarations were submitted for the following categories: clean-up solvents, aerospace coatings, shipbuilding and repair, wood furniture, plastic part coatings-business machines, plastic part coatings-others, autobody refinishing, and offset lithography.

For Dallas/Fort Worth, negative declarations were submitted for six categories: industrial wastewater, clean-up solvents, shipbuilding and repair, autobody refinishing, plastic part coatings-business machines, and offset lithography.

For the Houston/Galveston area, the State submitted negative declarations for the following 11 categories: clean-up solvents, aerospace coatings, wood furniture, plastic part coatings-business machines, plastic part coatings-others, autobody refinishing, and offset lithography.

For El Paso, negative declarations were submitted for the following nine categories: industrial wastewater, clean-up solvents, aerospace coatings, shipbuilding and repair, wood furniture, plastic part coatings-business machines, plastic part coatings-others, autobody refinishing, and offset lithography.

III. Final Action

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 30, 1996, unless, by November 29, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 30, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 30, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping, and Volatile organic compounds.

Dated: September 30, 1996.

Jerry Clifford,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(72) to read as follows:

§ 52.970 Identification of Plan.

* * * * *

(c) * * *

(72) Revisions to the Louisiana SIP addressing VOC RACT Negative Declarations. The Governor of Louisiana submitted the negative declarations for reasonably available control technology (RACT) for the Baton Rouge ozone nonattainment area on December 15, 1996. Section 172(c)(1) of the Clean Air Act requires nonattainment areas to adopt, at a minimum, RACT to reduce emissions from existing sources. Pursuant to section 182(b)(2) of the Act, for moderate and above ozone nonattainment areas, the EPA has identified 13 categories for such sources and developed the Control Technique Guidelines (CTGs) or Alternate Control Techniques (ACTs) documents to implement RACT at those sources. When no major volatile organic compound (VOC) sources for a CTG/ACT category exist in a nonattainment area, a State may submit a negative declaration for that category. Louisiana's submittal included two negative declaration letters from Mr. Gustave Von Bodungen to Ms. Karen Alvarez dated April 6, 1994, and June 20, 1994, for the following source categories: offset lithography, plastic parts-business machines, plastic parts-others, wood furniture, aerospace coatings, autobody refinishing, and shipbuilding coatings/repair. This submittal satisfies section 182(b)(2) of the Clean Air Act Amendments of 1990 for these particular CTG/ACT source categories for the Baton Rouge ozone nonattainment area.

(i) Incorporation by reference. The letter dated December 15, 1995, from the Governor of Louisiana to the Regional Administrator, submitting a revision to the Louisiana SIP for VOC RACT rules, which included VOC RACT negative declarations.

(ii) Additional material. (A) The negative declaration letter dated April 16, 1994, from Mr. Gustave Von Bodungen to Ms. Karen Alvarez.

(B) The negative declaration letter dated June 20, 1994, from Mr. Gustave Von Bodungen to Ms. Karen Alvarez.

Subpart SS—Texas

3. Section 52.2270 is amended by adding paragraph (c)(103) to read as follows:

§ 52.2270 Identification of Plan.

* * * * *

(c) * * *

(103) Revisions to the Texas SIP addressing VOC RACT Negative Declarations. A revision to the Texas SIP was submitted on January 10, 1996, which included negative declarations for various categories. Section 172(c)(1) of the Clean Air Act Amendments of 1990 requires nonattainment areas to adopt, at a minimum, the reasonably available control technology (RACT) to reduce emissions from existing sources. Pursuant to section 182(b)(2) of the Act, for moderate and above ozone nonattainment areas, the EPA has identified 13 categories for such sources and developed the Control Technique Guidelines (CTGs) or Alternate Control Techniques (ACTs) documents to implement RACT at those sources. When no major volatile organic compound (VOC) sources for a source category exist in a nonattainment area, a State may submit a negative declaration for that category. Texas submitted negative declarations for the areas and source categories listed in this paragraph (c) (103). For the Beaumont/

Port Arthur region, negative declarations were submitted for the following eight categories: clean-up solvents, aerospace coatings, shipbuilding and repair, wood furniture, plastic part coatings-business machines, plastic part coatings-others, autobody refinishing, and offset lithography. For Dallas/Fort Worth, negative declarations were submitted for six categories: industrial wastewater, clean-up solvents, shipbuilding and repair, autobody refinishing, plastic part coatings-business machines, and offset lithography. For the Houston/Galveston area, negative declarations were submitted for seven categories: clean-up solvents, aerospace coatings, wood furniture, plastic part coatings-business machines, plastic part coatings-others, autobody refinishing, and offset lithography. For El Paso, negative declarations were submitted for nine categories: industrial wastewater, clean-up solvents, aerospace coatings, shipbuilding and repair, wood furniture, plastic part coatings-business machines, plastic part coatings-others, autobody refinishing, and offset lithography. This submittal satisfies section 182(b)(2) of the Clean Air Act Amendments of 1990 for these particular CTG/ACT source categories for the Texas ozone nonattainment areas stated in this paragraph (c) (103).

(i) *Incorporation by reference.* The letter dated January 10, 1996, from the Governor of Texas to the Regional Administrator, submitting the Post-1996 Rate of Progress Plan as a revision to the SIP, which included VOC RACT negative declarations.

(ii) *Additional material.* Pages 53, 55 through 59, 61, 63, and 64 of the Post-1996 Rate of Progress Plan, adopted by the Texas Natural Resource Conservation Commission on December 13, 1995.

[FR Doc. 96–27604 Filed 10–29–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[RI–12–6969a; FRL–5608–1]

Approval and Promulgation of Implementation Plans; Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA today is approving State Implementation Plan (SIP) revisions submitted by the State of Rhode Island. These revisions consist of the 1990 base year ozone emission inventory, Photochemical Assessment Monitoring System (PAMS) network, and volatile organic compound (VOC) regulations that will serve as contingency measures for the Rhode Island SIP.

The inventory was submitted by the State to satisfy a Clean Air Act (CAA) requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions in accordance with guidance from the EPA. The ozone emission inventory submitted by the State is for the Providence, Rhode Island serious area. The PAMS SIP revision was submitted to satisfy the requirements of the CAA and the PAMS regulations. The PAMS regulation required the State to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network in the form of PAMS by November 12, 1993. The VOC regulations were submitted to fulfill a CAA requirement that contingency measures be implemented if Reasonable Further Progress (RFP) is not achieved or if the standard is not attained by the applicable date. The intended effect of this action is to approve as a revision to the Rhode Island SIP the state's 1990 base year ozone emission inventory, PAMS network, Commercial and Consumer products regulation, and Architectural and Industrial Maintenance (AIM) coating regulation.

DATES: This action will become effective on December 30, 1996 unless notice is received by November 29, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Region I office, and at the Rhode Island Department of Environmental Management, Division of Air Resources, 291 Promenade Street, Providence, Rhode Island, 02908–5767. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, Air Quality Planning Group, EPA Region I, JFK Federal Building, Boston, Massachusetts, 02203; telephone (617) 565–9266.

SUPPLEMENTARY INFORMATION: Rhode Island has submitted the following formal revisions to its SIP to the EPA: 1990 base year emission inventory of ozone precursors, submitted in final form on March 15, 1994; establishment of a PAMS network into the State's overall ambient air quality monitoring network, submitted on January 14, 1994; a VOC control regulation pertaining to consumer and commercial products submitted on March 15, 1994; a VOC control regulation pertaining to architectural and industrial maintenance coatings submitted on March 15, 1994. This document is divided into three parts:

I. Background

1. Emission Inventory

Under the CAA as amended in 1990, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAA requires ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce VOC emissions by 15 percent within six years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the ''Emission Inventory Requirements for Ozone State Implementation Plans,'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. The base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)-(e) of title I of the CAA.

The EPA has issued a General Preamble describing the EPA's preliminary views on how the agency intends to review SIP revisions submitted under title I of the Act, including requirements for the preparation of the 1990 base year inventory [see 57 FR 13502 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. In this action EPA will rely on the General Preamble's interpretation of the CAA, and the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's rule and the supporting rationale.

Those States containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the CAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources within 2 years of enactment (November 15, 1992). This inventory is for calendar year 1990 and is denoted as the base year inventory. It includes both anthropogenic and biogenic sources of volatile organic compound (VOC), nitrogen oxides (NO_X), and carbon monoxide (CO). The inventory is to address actual VOC, NO_X, and CO emissions for the area during a peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498 (April 16, 1992)).

2. PAMS Network

On November 21, 1993, and January 14, 1994 the Rhode Island Department of Environmental Management (DEM) submitted to the EPA a SIP revision incorporating PAMS into the ambient air quality monitoring network of State or Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS). The State will establish and maintain PAMS as part of its overall ambient air quality monitoring network.

Section 182(c)(1) of the CAA and the General Preamble (57 FR 13515) require that the EPA promulgate rules for enhanced monitoring of ozone, oxides of nitrogen (NO_X), and volatile organic compounds (VOC) no later than 18 months after the date of the enactment of the Act. These rules will provide a mechanism for obtaining more comprehensive and representative data on ozone air pollution in areas designated nonattainment and classified as serious, severe, or extreme.

The final PAMS rule was promulgated by the EPA on February 12, 1993 (58 FR 8452). Section 58.40(a) of the revised rule requires the State to submit a PAMS network description, including a schedule for implementation, to the Administrator within six months after promulgation or by August 12, 1993. Further, 58.20(f) requires the State to provide for the establishment and maintenance of a PAMS network within nine months after promulgation of the final rule or by November 12, 1993.

On November 21, 1993, the Rhode Island DEM submitted a draft PAMS network plan which included a schedule for implementation. This submittal was reviewed and approved on July 21, 1994 by the EPA and was judged to satisfy the requirements of Section 58.40(a). Since network descriptions may change annually, they are not part of the SIP as recommended by the document, ''Guideline for the Implementation of the Ambient Air Monitoring Regulations, 40 CFR Part 58'' EPA–450/4–78–038, OAQPS, November 1979. However, the network description is negotiated and approved during the annual review as required by 40 CFR 58.25 and 58.36, respectively, and any revision must be reviewed as provided at 40 CFR 58.46.

On November 21, 1993, and January 14, 1994 the Rhode Island DEM submitted the PAMS SIP revision to the EPA. The EPA sent the State a letter on May 17, 1994 finding the submittal administratively complete.

The Rhode Island PAMS SIP revision is intended to meet the requirements of section 182(c)(1) of the Act and to comply with the PAMS regulations, codified at 40 CFR part 58. The Rhode Island DEM held a public hearing on the PAMS SIP revision on December 15, 1993.

3. VOC Control Regulations

A. Consumer and Commercial Products

Under Section 183(e) of the CAA, the EPA is required to (1) study emissions of VOCs from consumer and commercial products; (2) list those categories of products that account for at least 80 percent of the total VOC emissions from consumer and commercial products in areas of the country that fail to meet the national air quality standards set for ground-level ozone; and (3) divide the list into four groups, and regulate one group every two years using best available controls, as defined by the CAA.

In March 1995, EPA issued a report to Congress entitled, ''Study of Volatile Organic Compound Emissions from Consumer and Commercial Products,'' which evaluated the contribution of VOC emissions from consumer and commercial products on ground-level ozone levels, and established criteria and a schedule for regulating these products under the Clean Air Act. The EPA identified 24 categories of household products within the first group of products to be regulated by the EPA by no later than March 1997. Rhode Island decided to adopt rules for consumer and commercial products in advance of a federal rule to get credit for reductions from this category in its contingency plan.

On November 24, 1993, the Rhode Island DEM submitted to the EPA for comment proposed amendments to its SIP to address the contingency measure requirements. The submittal included new air pollution control regulation Number 31 entitled ''Control of Volatile Organic Compounds from Consumer and Commercial Products.'' Rhode Island held a public hearing on December 15, 1993, for the proposed consumer and commercial products rule. EPA submitted written comments regarding the proposed regulations on December 14, 1993 and January 3, 1994. The regulation was adopted on March 11, 1994, and became effective on March 31, 1994. Because this regulation is a part of the State's contingency plan, compliance with most parts of the rule must be achieved by the date 90 days after the date that the EPA notifies the Director of the Rhode Island DEM that the State has failed to achieve a 15% reduction in VOC emissions from the 1990 emission levels.

On March 15, 1994, the Rhode Island DEM submitted a formal revision to its SIP. The SIP revision included Air Pollution Control Regulation Number 31.

The adopted rule regulates the VOC content of consumer and commercial products. The regulation applies to any person who sells, offers for sale, or manufactures for sale within Rhode Island commercial and consumer products specified in Rhode Island Air Pollution Control Regulation Number 31.

B. Architectural and Industrial Maintenance (AIM) Coatings

On November 24, 1993, the Rhode Island DEM submitted to the EPA for comment a proposed amendment to the SIP consisting of a new Air Pollution Control Regulation Number 33 entitled, ''Control of Volatile Organic Compounds from Architectural and Industrial Maintenance Coatings.'' Rhode Island held a public hearing on December 15, 1993 for its proposed AIM coatings rule. The EPA submitted written comments regarding the proposed regulation on December 14, 1993 and January 3, 1994. The rule was adopted on March 11, 1994, with an effective date of March 31, 1994. Because this regulation is a part of the State's contingency plan, compliance with most parts of the rule must be achieved by the date 90 days after the date that the EPA notifies the Director of the Rhode Island DEM that the State has failed to achieve a 15% reduction in VOC emissions from the 1990 emission levels.

On March 15, 1994, the Rhode Island DEM submitted formal revisions to its State Implementation Plan (SIP). The SIP revisions included Air Pollution Control Regulation Number 33, ''Control of Volatile Organic Compounds from Architectural and Industrial Maintenance Coatings.'' The rule regulates the VOC content of AIM coatings. The regulation applies to any person who sells, offers for sale, applies, or who manufactures architectural coatings and industrial maintenance coatings specified in Air Pollution Control Regulation Number 33 for sale within the State of Rhode Island.

II. Analysis of State Submission

1. Emission Inventory

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing emission inventory submissions to the EPA. Section 110(a)(2) of the Act provides that each emission inventory submitted by a State must be adopted after reasonable notice and public hearing.[1] Final approval of the inventory will not occur until the State revises the inventory to address public comments. Changes to the inventory that impact the 15 percent reduction calculation and require a revised control strategy will constitute a SIP revision. EPA created a ''de minimis'' exception to the public hearing requirement for minor changes. EPA defines ''de minimis'' for such purposes to be those in which the 15 percent reduction calculation and the associated control strategy or the maintenance plan showing, do not change. States will aggregate all such ''de minimis'' changes together when making the determination as to whether the change constitutes a SIP revision. The State will need to make the change through the formal SIP revision process, in conjunction with the change to the control measure or other SIP programs.[2] Section 110(a)(2) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The State of Rhode Island held a public hearing on the 1990 base year inventory for the Providence nonattainment area on December 16, 1992. The inventory was submitted to the EPA as a SIP revision on January 12, 1993, by cover letter from the Governor's designee. The inventory was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The inventory was complete except for the public hearing requirement. Although Rhode Island held a public hearing on the inventory on December 16, 1992, the state did not submit a certification to EPA that a public hearing had been held. The EPA determined that for inventories that had not met the public hearing requirement, a finding of completeness would be made contingent upon the State fulfilling the public hearing requirement.[3] The submittal was found to be complete contingent upon the State fulfilling the public hearing requirement, and a letter dated February 24, 1993, was forwarded to the State indicating the completeness of the submittal.

Prior to Rhode Island's submittal of a final inventory to the EPA on January 12, 1993, the State submitted a draft inventory to EPA within submittals dated June 23 and July 31, 1992. EPA reviewed the draft inventory and sent comments to the state by letter dated October 28, 1992. Rhode Island submitted a revised inventory to EPA on November 13, 1992, which addressed many of EPA's comments. EPA reviewed the November 13, 1992 submittal and provided comments to the State through the hearing process by letter dated December 18, 1992.

On February 12, 1993, RI submitted revisions to its final 1990 base year emission inventory. The EPA submitted further comments to the Rhode Island DEM on the 1990 base year inventory by letter dated November 2, 1993. These comments included comments developed by an EPA contractor's review of the Rhode Island inventory. The contractor's comments are summarized in an April 16, 1993 report. A revision to the base year inventory was submitted by the State on December 15, 1993. A second public hearing on the emission inventory was held the same day. A final revision to the base year inventory was submitted by the Rhode Island DEM to EPA on March 15, 1994. The revisions included documentation that the inventory had been subject to a public hearing.

The EPA Region I Office has compared the final Rhode Island inventory with the deficiencies noted in the various comment letters and concluded that Rhode Island has adequately addressed the issues raised by the EPA.

B. Emission Inventory Review

Section 110(k) of the CAA sets out provisions governing the EPA's review of base year emission inventory submittals in order to determine approval or disapproval under section 182 (a)(1) (*see* 57 FR 13565–66 (April 16, 1992)). The EPA is approving the Rhode Island ozone base year emission inventory submitted to the EPA in final form on March 15, 1994, based on the Level I, II, and III review findings. This section outlines the review procedures performed to determine if the base year emission inventory is acceptable or should be disapproved.

The Level I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the State and assesses whether the emissions were developed according to current EPA guidance.

The Level III review process is outlined here and consists of 10 points that the inventory must include. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) was provided and the QA program contained in the IPP was performed and its implementation documented.
2. Adequate documentation was provided that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.
3. The point source inventory must be complete.

[1] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[2] Memorandum from John Calcagni, Director, Air Quality Management Division, and William G. Laxton, Director, Technical Support Division, to Regional Air Division Directors, Region I–X, ''Public Hearing Requirements for 1990 Base-Year Emission Inventories for Ozone and Carbon Monoxide Nonattainment Areas,'' September 29, 1992.

[3] Memorandum from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, Regions I–X, ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines'' October 28, 1992.

4. Point source emissions must have been prepared or calculated according to the current EPA guidance.

5. The area source inventory must be complete.

6. The area source emissions must have been prepared or calculated according to the current EPA guidance.

7. Biogenic emissions must have been prepared according to current EPA guidance or another approved technique.

8. The method (e.g., Highway Performance Modeling System or a network transportation planning model) used to develop vehicle miles traveled (VMT) estimates must follow EPA guidance, which is detailed in the document, ''Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources'', U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992.

9. The MOBILE model (or EMFAC model for California only) was correctly used to produce emission factors for each of the vehicle classes.

10. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.

The base year emission inventory will be approved if it passes Levels I, II, and III of the review process. Detailed Level I and II review procedures can be found in ''Quality Review Guidelines for 1990 Base Year Emission Inventories,'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. Level III review procedures are specified in EPA memoranda noted in the margin.[4]

Rhode Island's inventory meets each of these ten criteria. Documentation of the EPA's evaluation, including details of the review procedure, is contained within the technical support document prepared for the Rhode Island 1990 base year inventory, which is available to the public as part of the docket supporting this action.

2. PAMS Network

The Rhode Island PAMS SIP revision will provide the State with the authority to establish and operate the PAMS sites, will secure State funds for PAMS, and will provide the EPA with the authority to enforce the implementation of PAMS, since their implementation is required by the Act.

The criteria used to review the proposed SIP revision are derived from the PAMS regulations, codified at 40 CFR Part 58, and are included in ''Guideline for the Implementation of the Ambient Air Monitoring Regulations'' 40 CFR Part 58 (EPA–450/4–78–038, Office of Air Quality Planning and Standards, November 1979), the September 2, 1993, memorandum from G. T. Helms entitled, ''Final Boilerplate Language for the PAMS SIP Submittal,'' the CAA, and the General Preamble.

The September 2, 1993, Helms memorandum stipulates that the PAMS SIP, at a minimum, must:

1. provide for monitoring of criteria pollutants, such as ozone and nitrogen dioxide and non-criteria pollutants, such as nitrogen oxides, speciated VOCs, including carbonyls, as well as meteorological parameters;

2. provide a copy of the approved (or proposed) PAMS network description, including the phase-in schedule, for public inspection during the public notice and/or comment period provided for in the SIP revision or, alternatively, provide information to the public upon request concerning the State's plans for implementing the rules;

3. make reference to the fact that PAMS will become a part of the State or local air monitoring stations (SLAMS) network;

4. provide a statement that SLAMS will employ Federal reference methods (FRM) or equivalent methods while most PAMS sampling will be conducted using methods approved by the EPA.

The Rhode Island PAMS SIP revision provides that the State will implement PAMS as required in 40 CFR Part 58, as amended February 12, 1993. The State will amend its SLAMS and its NAMS monitoring systems to include the PAMS requirements. It will develop its PAMS network design and establish monitoring sites pursuant to 40 CFR part 58 in accordance with an approved network description and as negotiated with the EPA through the 105 grant process on an annual basis. The State has begun implementing its PAMS network as required in 40 CFR Part 58.

The Rhode Island PAMS SIP revision also includes a provision to meet quality assurance requirements as contained in 40 CFR Part 58, Appendix A. The State's SIP revision also assures EPA that the State's PAMS monitors will meet monitoring methodology requirements contained in 40 CFR Part 58, Appendix C. Lastly, the State's SIP revision requires that the Rhode Island PAMS network will be phased in as required in 40 CFR 58.44. The State's PAMS SIP submittal and the EPA's technical support document are available for viewing at the EPA Region I Office as outlined under the Addresses section of this Federal Register document. The State's PAMS SIP submittal is also available for viewing at the Rhode Island State Office as outlined under the Addresses section of this Federal Register document.

3. VOC Regulations

A. Consumer and Commercial Products

''Consumer product'' is defined by Rhode Island as ''A chemically formulated product sold retail or wholesale and used by household, commercial, and/or institutional consumers including, but not limited to, detergents, cleaning compounds, polishes, floor finishes, cosmetics, personal care products, disinfectants, sanitizers, and automotive specialty products.'' Rhode Island's rule does not regulate paints, furniture coatings or architectural coatings.

The consumer products portion of the rule contains limits that specify the maximum allowed VOC content (percent VOC by weight) for the following categories of commercial and consumer products: air fresheners, bathroom and tile cleaners, engine degreasers, floor polishes/waxes, furniture maintenance products, general purpose cleaners, glass cleaners, hair care products, nail polish remover, oven cleaners, insecticides, antiperspirants and deodorants.

The regulation also includes the following requirements: 1. the date of manufacture must be specified on product labels; 2. manufacturers must certify compliance with the rule and provide data on VOC content of the products; 3. recordkeeping requirements on the amount of product subject to the regulation that was sold in Rhode Island the previous calendar year, beginning July 1, 1994; 4. compliance demonstration by testing or through product formulation data, upon request of the EPA or the State or Rhode Island.

The EPA has determined that Regulation 31 is enforceable and will improve air quality. The EPA's evaluation is detailed in a memorandum, entitled ''Technical Support Document for Rhode Island's Regulation 31, Control of Volatile Organic Compounds from Commercial and Consumer Products,'' which is available to the public as part of the docket supporting this action.

[4] Memorandum from J. David Mobley, Chief, Emissions Inventory Branch, to Air Branch Chiefs, Region I–X, ''Final Emission Inventory Level III Acceptance Criteria,'' October 7, 1992; and memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region I–X, ''Emission Inventory Issues,'' June 24, 1993.

B. AIM Coatings

''Architectural Coating'' is defined by Rhode Island as: ''Any coating which is applied to stationary structures and their appurtenances, mobile homes, pavements, or curbs.'' The rule defines ''Industrial Maintenance Coating'' as: ''a high performance coating which is formulated for the purpose of protecting against heavy abrasion, water immersion, corrosion, temperature extremes, electric potential, solvents, or other chemicals.''

Rhode Island's rule contains limits that specify the maximum allowed VOC content (percent VOC by weight) for the following categories of architectural and industrial maintenance coatings: bituminous pavement sealer, bond breakers, concrete curing compound, dry fog coating, flat coatings, fire retardant coating, form release compound, graphic arts coating (sign paint), high temperature industrial maintenance coating, industrial maintenance coating, lacquer, magnesite cement coating, mastic texture coating, metallic pigmented coating, multicolor coating, non-flat coatings, pretreatment wash primer, primer/sealer/undercoat, quick dry primer/sealer/undercoat, roof coating, shellac, stains, swimming pool coating, tile-like glaze, traffic marking coating, varnish, waterproofing sealer, wood preservative, and any other architectural coating not otherwise specified.

Rhode Island's AIM rule also contains provisions requiring the date of manufacture on product labels, that the maximum VOC content be specified and a statement from the manufacturer regarding recommended thinning procedures, that records of the amount of product shipped to Rhode Island annually be maintained, and that compliance testing be performed in accordance with EPA approved methods upon request by the State or the EPA.

The EPA has determined that Regulation 33 is enforceable and will improve air quality. The EPA's evaluation is detailed in a memorandum, entitled ''Technical Support Document for Rhode Island's Regulation 33, Control of Volatile Organic Compounds from Architectural and Industrial Maintenance Coatings,'' which is available to the public as part of the docket supporting this action.

III. Final Action

1. Emission Inventory

Rhode Island has submitted a complete inventory containing point, area, biogenic, on-road mobile, and non-road mobile source data, and accompanying documentation. Emissions from these sources are presented in the following table:

VOC

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
Prov	60.50	25.90	65.60	32.10	72.90	257.00

NO_x

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
Prov	3.80	14.00	57.80	25.20	NA	100.80

CO

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
Prov	2.10	6.20	545.60	196.60	NA	750.50

Rhode Island has satisfied all of the EPA's requirements for providing a comprehensive, accurate, and current inventory of actual ozone precursor emissions in the Providence ozone nonattainment area. The inventory is complete and approvable according to the criteria set out in the November 12, 1992 memorandum from J. David Mobley, Chief Emission Inventory Branch, TSD to G. T. Helms, Chief Ozone/Carbon Monoxide Programs Branch, AQMD. In today's final action, the EPA is fully approving the SIP 1990 base year ozone emission inventory submitted by Rhode Island to the EPA for the Providence nonattainment area as meeting the requirements of section 182(a)(1) of the CAA.

2. PAMS Network

In today's action, the EPA is fully approving the revision to the Rhode Island ozone SIP for PAMS.

3. VOC Regulations

A. Commercial and Consumer Products Regulation

In today's action, the EPA is fully approving the revision to the Rhode Island SIP establishing new Air Pollution Control Regulation Number 31, entitled, ''Control of Volatile Organic Compounds from Commercial and Consumer Products.'' In the proposed rule on Rhode Island's 15% SIP submittal published today, however, EPA disagrees with RI–DEM's projections for the level of emission reductions Regulation Number 31 will achieve.

B. Architectural and Industrial Coatings Regulation

In today's action, the EPA is fully approving the revision to the Rhode Island SIP establishing new Air Pollution Control Regulation Number 33 entitled, ''Control of Volatile Organic Compounds from Architectural and

Industrial Maintenance Coatings.'' In the proposed rule on Rhode Island's 15% SIP submittal published today, however, EPA disagrees with RI–DEM's projections for the level of emission reductions Regulation Number 33 will achieve.

The EPA is publishing these actions without prior proposal because the Agency views them as noncontroversial amendments and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve these SIP revisions and is soliciting public comment on them. If adverse comments are received on this direct final rule, this action will be withdrawn before the effective date by publishing a subsequent rule that withdraws this final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 30, 1996.

The EPA has reviewed these requests for revision of the federally approved SIP for conformance with the provisions of the Clean Air Act Amendments. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for- profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410 (a)(2).

C. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector; or to State, local, or tribal governments in the aggregate.

Through submission of these SIP revisions which have been proposed for limited approval in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 182 of the CAA. The rules and commitments given limited approval in this action may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being given limited approval by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector; the EPA's action will impose no new requirements. Such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, the EPA has determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

D. Submissions to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 30, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Incorporation by reference, Air pollution control, Carbon monoxide, Environmental protection, hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 21, 1996.

John P. DeVillars,

Regional Administrator, EPA Region I.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7641q.

Subpart OO—Rhode Island

2. Section 52.2086 is added to read as follows:

§ 52.2086 Emission inventories.

(a) The Governor's designee for the State of Rhode Island submitted the

1990 base year emission inventory for the Providence ozone nonattainment area on January 12, 1993 as a revision to the State Implementation Plan (SIP). The 1990 base year emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for this area.

(b) The inventory is for the ozone precursors which are volatile organic compounds, nitrogen oxides, and carbon monoxide. The inventory covers point, area, non-road mobile, on-road mobile, and biogenic sources.

(c) The Providence nonattainment area is classified as serious and includes the entire state of Rhode Island.

3. Section 52.2070 is amended by adding paragraph (c)(46) to read as follows:

§ 52.2070 Identification of plan.

(c) * * *

(46) A revision to the Rhode Island SIP regarding ozone monitoring. The State of Rhode Island will modify its SLAMS and its NAMS monitoring systems to include a PAMS network design and establish monitoring sites. The State's SIP revision satisfies 40 CFR 58.20(f) PAMS requirements.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated January 14, 1994 submitting an amendment to the Rhode Island State Implementation Plan.

(B) Letter from the Rhode Island Department of Environmental Management dated June 14, 1994 submitting an amendment to the Rhode Island State Implementation Plan.

(C) Section VII of the Rhode Island State Implementation Plan, Ambient Air Quality Monitoring.

4. Section 52.2070 is amended by adding paragraph (c)(47) to read as follows:

§ 52.2070 Identification of plan.

(c) * * *

(47) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on March 15, 1994.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated March 15, 1994 submitting revisions to the Rhode Island State Implementation Plan.

(B) The following portions of the Rules Governing the Control of Air Pollution for the State of Rhode Island, with the exception of Section 31.2.2, effective 90 days after the date that EPA notifies Rhode Island that the State has failed to achieve a 15% reduction of VOC emission from the 1990 emission levels, in accordance with the contingency measure provisions of the Rhode Island SIP, (except for Section 31.5.2, which requires records of amount of product sold, beginning July, 1994.): Air Pollution Control Regulation No. 31, Control of Volatile Organic Compounds from Commercial and Consumer Products.

(C) The following portions of the Rules Governing the Control of Air Pollution for the State of Rhode Island, with the exception of Section 33.2.2, effective 90 days after the date that EPA notifies Rhode Island the State has failed to achieve a 15% reduction of VOC emission from the 1990 emission levels, in accordance with the contingency measure provisions of the Rhode Island SIP, (except for Section 33.5.2, which requires records of amount of product sold, beginning July, 1994.): Air Pollution Control Regulation No. 33, Control of Volatile Organic Compounds from Architectural and Industrial Maintenance Coatings.

5. In § 52.2081 Table 52.2081 is amended by adding new citations for 31 and 33 in numerical order to read as follows: § 52.2081—EPA—approved Rhode Island state regulations.

* * * * *

TABLE 52.2081—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/Unapproved sections
*	*	*	*	*	*	*
No. 31	Consumer and Commercial Products.	March 11, 1994	October 30, 1996	[Insert *FR* citation from publication date].	c (47)	VOC control reg. submitted as part of State's Contingency Plan. Section 31.2.2 not approved.
*	*	*	*	*	*	*
No. 33	Architectural and Industrial Maintenance Coatings.	March 11, 1994	October 30, 1996	[Insert *FR* citation from publication date].	c (47)	VOC control reg. submitted as part of State's Contingency Plan Section 33.2.2 not approved.

[FR Doc. 96–27602 Filed 10–29–96; 8:45 am]

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40 CFR Parts 52 and 81

[TN 152–1–9703; FRL–5639–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 14, 1994, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted a maintenance plan and a request to redesignate the Middle Tennessee (Nashville) area from moderate nonattainment to attainment for ozone (O_3). Subsequently on August 9, 1995, and January 19, 1996, the State submitted supplementary information which included revised contingency measures and emission projections. The Nashville O_3 nonattainment area consists of Davidson, Rutherford, Sumner, Williamson, and Wilson Counties. Under the Clean Air Act (CAA), designations can be changed if sufficient data are available to warrant such changes. On June 24, 1996, EPA published a document proposing approval of the maintenance plan and redesignation request. EPA received a number of comments regarding the proposed rule. Those comments and the response thereto are summarized in the supplementary information that follows. In this action, EPA is approving the State of Tennessee's submittal because it meets the maintenance plan and

redesignation requirements. The approved maintenance plan will become a federally enforceable part of Tennessee's State Implementation Plan (SIP) for the Nashville area. EPA is also approving the State of Tennessee's 1990 baseline emissions inventory and 1994 base year emissions inventory because both meet EPA's requirements regarding the approval of baseline emission inventories.

EFFECTIVE DATE: This final rule is effective October 30, 1996.

ADDRESSES: Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street SW, Atlanta, Georgia 30303.

Tennessee Department of Environment and Conservation, 9th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

Bureau of Environmental Health Services, Metropolitan Health Department, 311—23rd Avenue, North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Steven M. Scofield, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 100 Alabama Street SW, Atlanta, Georgia 30303. The telephone number is 404/562–9034. Reference file TN–152–1–9703.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C), EPA designated the Nashville area as nonattainment by operation of law with respect to O_3 because the area was designated nonattainment immediately before November 15, 1990. The area was classified as moderate.

The moderate nonattainment area more recently has ambient monitoring data that show no violations of the O_3 National Ambient Air Quality Standard (NAAQS), during the period from 1992 through 1995. Therefore, in an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on November 14, 1994, the State of Tennessee submitted an O_3 maintenance plan and requested redesignation of the area to attainment with respect to the O_3 NAAQS. On March 13, 1995, Region 4 determined that the information received from the State constituted a complete redesignation request under the general completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2. Subsequently, on August 9, 1995, and January 19, 1996, the State submitted supplementary information which included revised contingency measures and emission projections.

The Tennessee redesignation request for the Nashville moderate O_3 nonattainment area meets the five requirements of section 107(d)(3)(E) for redesignation to attainment. The following is a brief description of how the State of Tennessee has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. The Area Must Have Attained the O_3 NAAQS

The State of Tennessee's request is based on an analysis of quality assured ambient air quality monitoring data, which is relevant to the maintenance plan and to the redesignation request. Most recent ambient air quality monitoring data from calendar year 1992 to date in 1996 demonstrates attainment of the standard. The State of Tennessee has committed to continue monitoring the moderate nonattainment area in accordance with 40 CFR part 58. Therefore, the State has met this requirement. For detailed information refer to the proposal document published June 24, 1996 (61 FR 32386).

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

EPA has reviewed the Tennessee SIP and ensures that it contains all measures due under the amended CAA prior to or at the time the State of Tennessee submitted its redesignation request. For detailed information regarding applicable requirements, refer to the proposal document.

EPA has determined that the section 172(c)(2) reasonable further progress (RFP) requirement (with parallel requirements for a moderate ozone nonattainment area under subpart 2 of part D, due November 15, 1993) was not applicable as the State of Tennessee submitted this redesignation request on November 14, 1994, which demonstrated that the Nashville area was monitoring attainment of the O_3 standard. EPA determined on June 22, 1995, effective August 7, 1995, that the Nashville area had attained the O_3 standard and that RFP and 15 percent plan requirements do not apply to the area for so long as the area does not monitor any violations of the O_3 standard.

A. Section 182(a)(1)—Emissions Inventory

Tennessee has met this requirement. This document gives final approval of the 1990 baseline emissions inventory. For detailed information regarding this requirement, refer to the proposal document.

B. Section 182(a)(2), 182(b)(2)—Reasonably Available Control Technology (RACT)

As stated in the proposal document, Tennessee had met all RACT requirements except for those in section 182(b)(2), RACT Catch-ups. Tennessee submitted SIP revisions to correct deficiencies in the VOC regulations to EPA on February 21, 1995, February 8, 1996, February 23, 1996, April 22, 1996, and April 25, 1996. The approval of these SIP revisions was published in the Federal Register on July 18, 1996 (61 FR 37387), and was effective September 16, 1996. For detailed information regarding this requirement, refer to the proposal document.

C. Section 182(a)(3)—Emissions Statements

Revisions to Tennessee's emissions statements were included in the submittals addressing the RACT Catch-ups. The approval of these SIP revisions was published in the Federal Register on July 18, 1996 (61 FR 37387), and was effective September 16, 1996. For detailed information regarding this requirement, refer to the proposal document.

D. Section 182(b)(1)—15% Progress Plans

The State of Tennessee submitted this redesignation request on November 14, 1994, which demonstrated that the Nashville area was monitoring attainment of the O_3 standard. EPA determined on June 22, 1995, effective August 7, 1995, that the Nashville area had attained the O_3 standard and that RFP and 15 percent plan requirements do not apply to the area for so long as the area does not monitor any violations of the O_3 standard. For detailed information regarding this requirement, refer to the proposal document.

E. Section 182(b)(1)—New Source Review (NSR)

Tennessee has a fully approved NSR program for moderate O_3 nonattainment areas.

Tennessee submitted revisions to its prevention of significant deterioration (PSD) rule on September 1, 1993, and June 10, 1996. The approval of these SIP revisions was published in the Federal Register on July 29, 1996 (61 FR 39332), and was effective September 12, 1996. For detailed information regarding this requirement, refer to the proposal document.

F. Section 182(b)(3)—Stage II

On January 24, 1994, EPA promulgated the on board vapor recovery (OBVR) rule, and section 202(a)(6) of the CAA provides that once the rule is promulgated, moderate areas are no longer required to implement Stage II. Thus, the Stage II vapor recovery requirement of section 182(b)(3) is no longer an applicable requirement. However, Tennessee submitted Stage II vapor recovery rules to EPA which were approved on February 9, 1995 (60 FR 7713), with an effective date of April 10, 1995. For detailed information regarding this requirement, refer to the proposal document.

G. Section 182(b)(4)—Motor Vehicle Inspection and Maintenance (I/M)

The CAA required all moderate and above areas to revise the SIP to include provisions necessary to provide for a vehicle inspection and maintenance (I/M) program. The State has the required legal authority for I/M, and EPA approved the program on July 28, 1995 (60 FR 38694), with an effective date of September 26, 1995. For detailed information regarding this requirement, refer to the proposal document.

H. Section 182(f)—Oxides of Nitrogen (NO_X) Requirements

Tennessee submitted a request for an exemption from the 182(f) requirements on March 21, 1995. In addition, NO_X reductions were obtained from two sources prior to the Nashville area attaining the O_3 standard. The State submitted these permits for approval on May 31, 1996. The approval of these SIP revisions was published in the Federal Register and will be effective prior to the effective date of this action. For detailed information regarding this requirement, refer to the proposal document.

3. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the pre-amended CAA and EPA's prior approval of SIP revisions under the amended CAA, EPA has determined that Tennessee has a fully approved O_3 SIP under section 110(k).

4. The Air Quality Improvement Must Be Permanent and Enforceable

Several control measures have come into place since the Nashville nonattainment area violated the O_3 NAAQS. Of these control measures, the reduction of fuel volatility to 9.5 psi in 1989, and finally to 7.8 psi beginning with the summer of 1992, as measured by the Reid Vapor Pressure (RVP), and fleet turnover due to the Federal Motor Vehicle Control Program (FMVCP) produced the most significant decreases in VOC emissions. The reduction in VOC emissions due to the mobile source regulations from 1990 to 1994 was 27.14 tons per day (28.6%). The VOC emissions in the base year are not artificially low due to local economic downturn.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

In this document, EPA is approving the State of Tennessee's maintenance plan for the Nashville nonattainment area because EPA finds that Tennessee's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 15, 1993, the State of Tennessee submitted comprehensive inventories of VOC, NO_X, and CO emissions from the Nashville area. The inventories include biogenic, area, stationary, and mobile sources for 1990.

The State submittal contains the detailed inventory data and summaries by county and source category. Finally, this inventory was prepared in accordance with EPA guidance. However, Tennessee had not attained the O_3 standard during 1990. Therefore, 1994 will be used as the base year for this redesignation. This document approves the 1990 baseline inventory and the 1994 base year inventory for the Nashville area. A summary of the 1990 baseline inventories as well as the 1994 base year and projected maintenance year inventories is included in this document.

SUMMARY OF VOC EMISSIONS

[Tons per day]

	1990	1994	1996	1999	2002	2006
Point	45.87	41.48	38.34	40.98	43.60	47.08
Area	67.67	50.46	43.91	46.11	48.31	51.24
Non-Road	27.83	28.74	29.09	29.39	29.68	30.08
Mobile	94.77	67.63	56.27	53.43	52.90	53.17
Total	263.14	188.31	167.61	169.91	174.49	181.57

SUMMARY OF NO_X EMISSIONS

[Tons per day]

	1990	1994	1996	1999	2002	2006
Point	111.79	124.96	73.45	78.99	84.50	94.25
Area	15.12	14.56	15.03	15.78	16.54	17.54
Non-Road	29.24	30.19	30.67	31.44	32.20	33.22
Mobile	111.34	120.53	102.20	98.79	96.25	96.60
Total	267.49	290.24	221.35	225.00	229.31	241.61

SUMMARY OF CO EMISSIONS

[Tons per day]

	1990	1994	1996	1999	2002	2006
Point	20.43	21.54	22.12	23.13	24.13	25.43
Area	35.94	11.75	16.97	17.48	18.00	18.68
Non-Road	188.69	194.80	197.93	202.86	207.78	214.35
Mobile	720.68	614.24	458.63	413.08	401.31	407.97
Total	965.74	842.33	695.65	656.55	651.22	666.43

B. Demonstration of Maintenance—Projected Inventories

Total VOC and NO_X emissions were projected from 1990 out to 2006, with interim years of 1994, 1996, 1999, and 2002. These projected inventories were prepared in accordance with EPA guidance. The projections show that VOC and NO_X emissions are not expected to exceed the level of the base year inventory during this time period.

C. Verification of Continued Attainment

Continued attainment of the O_3 NAAQS in the Nashville area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has also committed to complete periodic inventories of VOC and NO_X emissions every five years. The contingency plan for the Nashville area is triggered by three indicators; a violation of the O_3 NAAQS, the monitored ambient levels of O_3 exceed 0.12 parts per million (ppm) more than once in any year at any site in the nonattainment area, or the level of total VOC or NO_X emissions has increased above the attainment level in 1994 by ten percent or more.

D. Contingency Plan

The level of VOC and NO_X emissions in the Nashville area will largely determine its ability to stay in compliance with the O_3 NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, Tennessee has provided contingency measures with a schedule for implementation in the event of a future O_3 air quality problem. In the case of a violation of the O_3 NAAQS, the plan contains a contingency to implement additional control measures such as lower Reid Vapor Pressure for gasoline, lowering the threshold of applicability for major stationary VOC and NO_X sources from 100 tons per year (tpy) to 50 tpy, and application of RACT on sources covered by new CTG categories. Any additional measures taken by Tennessee will be implemented within 18 months of the trigger date. A complete description of these contingency measures and their triggers can be found in the State's submittal. EPA finds that the contingency measures provided in the State submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State of Tennessee has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

On June 24, 1996, EPA published a document proposing approval of the maintenance plan and redesignation request (61 FR 32386). EPA received a number of comments regarding the proposed rule. Those comments and the response thereto are summarized below.

Comment #1—The commenter disagreed that the State had met all of the requirements in section 107(d)(3)(E)(ii) and requested that all of the SIP requirements in section 107(d)(3)(E)(ii) be approved prior to the comment period on the redesignation.

Response—Section 107(d)(3)(E) stipulates that a redesignation of a nonattainment area to attainment may not be promulgated unless conditions (i) through (v) have been met. In the proposed rule published on June 24, 1996 (61 FR 32386), EPA did not promulgate the redesignation to attainment. The proposed rule clearly specifies that EPA will not take final action on the redesignation until the Tennessee SIP has been fully approved. Each of the actions approving the various SIP revisions have their own comment period during which the public may review and comment on those specific actions. As of this action, the State has submitted all of the requirements in section 107(d)(3)(E)(ii) and the EPA has approved each requirement.

Comment #2—The commenter requested that EPA provide the legal basis for the interpretation that only those requirements which came due prior to the State's request for redesignation must be met in order for the redesignation to be approved.

Response—Under the criterion contained in section 107(d)(3)(E)(ii), an area seeking redesignation must have a SIP that has been fully approved by the Administrator. EPA has interpreted this requirement to mean that there has been satisfactory completion of the Act's then current requirements at the time of the redesignation submittal. This interpretation is discussed in a memorandum dated September 17, 1993 from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, entitled State Implementation Plan (SIP) Requirements for Areas Submitting

Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992.

In particular, before EPA can act favorably upon any State redesignation request, the State must adopt statutorily-mandated control programs of Section 110 and Part D that were due prior to the time of the redesignation request. This interpretation makes clear what requirements a State must meet at the time of its redesignation submittal, and avoids the necessity of States continually resubmitting their request as more SIP requirements come due. In certain instances where a mandated requirement has come due, but has not yet been approved into the SIP, the State may submit the missing plan for approval with the redesignation request, and EPA must approve the plan submitted before it can act on the redesignation request. This circumstance includes submittal of a NO_X waiver pursuant to Section 182(f) of the Act. This issue is discussed in Section II: Policy Summary, and Section IV: Coordination of SIP Submittals and Redesignation Request, in the above-cited memorandum.

Comment #3—The commenter stated that EPA does not have the discretion to conditionally approve the redesignation, that conditional approval would not only be a misinterpretation of the use of conditional approvals, but also a violation of the Administrative Procedures Act.

Response—In the proposed rule published on June 24, 1996 (61 FR 32386), EPA did not conditionally approve any elements of the redesignation. The EPA proposed to approve the redesignation with no conditions specified. The document did state that final action would not be taken prior to final SIP approval. However, that does not constitute conditional approval. There will be no outstanding approvals at the time of final action.

Comment #4—The commenter requested that EPA extend the comment period until final approval of all of the requirements on which approval of the redesignation is contingent, or issue another public notice once the SIP is complete.

Response—As stated above, each of the actions approving the various SIP revisions (on which approval of the redesignation is contingent) have their own comment period during which the public may review and comment on those specific actions. EPA believes that the 30 day comment period for the proposed rule satisfies the requirements of the Administrative Procedures Act (5 U.S.C.A. § 553) and has provided the public adequate time in which to make comments. EPA denies the request to extend the comment period and denies the request to institute a second comment period on this action.

Comment #5—The commenter requested that more detail be provided on the contingency plan, and that the plan was brief and vague.

Response—Some detail has been added to EPA's discussion of its evaluation of the measures in Tennessee's contingency plan; however, only EPA's evaluation of the plan is included in this Federal Register notice. The contingency plan may be found in its entirety in the maintenance plan submitted by the State.

Comment #6—The commenter stated that it is premature to ask the public to comment on the redesignation when the NO_X exemption is being considered. Also, the commenter opposed EPA's redesignation since it is contingent on approval of a NO_X exemption which was done through direct final procedures for noncontroversial actions. The commenter asserted that since other actions similar to the Tennessee NO_X exemption had raised extensive public comment, the TN action was inappropriate.

Response—EPA believes that while the actions such as the NO_X exemption are related to the redesignation, these actions may proceed concurrently with the redesignation, as long as action on all of the SIP revisions on which approval of the redesignation is contingent are effective prior to or concurrent with the effective date of the redesignation. EPA does not agree that all NO_X exemptions are controversial because adverse comments were raised regarding similar *individual* NO_X exemptions. In fact, despite adverse comments, a number of NO_X exemptions have been granted and are in place as of this writing.

Comment #7—The commenter stated that, through inconsistent EPA policy, upwind states have been allowed to redesignate areas and obtain exemptions from NO_X and VOC programs required by the CAA without regard to the effects of these actions on downwind areas.

Response—Section 107(d)(3)(E) does not require a submission of a redesignation by a state to address the effects of that action and related NO_X and VOC programs on ''downwind'' areas. Moreover, EPA does not believe that allowing a NO_X exemption in the Nashville area will affect attainment or maintenance of the ambient standard for ozone in other states.

Comment #8—The commenter stated that EPA's ''clean data'' policy fails in that it does not address the long range transport of ozone. Also stated is that since several other ozone areas were redesignated and subsequently violated the ozone NAAQS, the maintenance plans for these areas do not contain adequate control programs and contingency measures, and that additional programs will be needed in Nashville as well.

Response—As stated above, section 107(d)(3)(E) does not require a submission of a redesignation by a state to address the long range transport of ozone, and EPA does not believe that this redesignation will affect long range ozone transport. The Nashville area has ambient monitoring data that show no violations of the ozone standard during the period from 1992 to date in 1996. EPA has determined that the maintenance plan and contingency measures for the Nashville area are adequate.

Comment #9—The commenter stated that, since the NO_X exemption was submitted after the request for redesignation, TN should have already had a NO_X RACT program in place at the time of the request for redesignation, and that a 15% rate of progress plan should have been submitted after the initial submission was found incomplete. Finally, the commenter stated that the redesignation and NO_X exemption should not be granted and urged EPA to reverse the notices on these actions.

Response—Tennessee had existing NO_X controls in effect during the attainment period, prior to the request for redesignation. EPA subsequently determined that the Nashville area had attained the standard (60 FR 32466, June 22, 1995), therefore additional NO_X controls were not needed to attain the ozone standard. In addition, EPA determined that RFP and 15% plan requirements do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1). The State submitted the redesignation on November 14, 1994, and EPA determined the submittal complete in a letter dated March 13, 1995. Due to the reasons stated above, EPA believes the actions regarding the redesignation and NO_X exemption are warranted.

Comment #10—The commenter requested that EPA deny the redesignation request until more information is available, including the results of the Southern Oxidant Study, since the area came close to having an exceedance last summer and the standard may be violated by the time the designation process is concluded. The commenter also asserted that, since there is scientific consensus that the current standard is not stringent enough to protect public health, and EPA intends to propose a tighter ozone standard, the area should not be reclassified.

Response—As stated in the response to comment 8, this action is based on ambient monitoring data that show no violations of the ozone NAAQS during the period from 1992 to date in 1996. Other information, such as results of the Southern Oxidant Study, is not relevant to the ozone redesignation. Regardless of occurrences of exceedances or near-exceedances, the Nashville area has attained the ozone standard. As of this action, the ozone standard is under review as to adequacy in protecting public health. Since the standard has not been revised, only attainment of the current standard has been evaluated for this redesignation.

Comment #11—The commenter expressed concern that redesignating the area would send the wrong message to the public, which would be to assume that the problem had been solved.

Response—EPA believes that the maintenance plan is adequate to maintain the ozone standard in the Nashville area, and redesignating the area to attainment is appropriate and accurately reflects the status of air quality concerning the current ozone NAAQS in the Nashville area.

Comment #12—The commenter disputed the inapplicability of reasonable further progress and 15% plan requirements; the commenter stated that EPA's determination exceeds its discretionary regulatory authority to modify specific statutory requirements.

Response—EPA does not believe that this determination modifies any specific statutory requirements. The purpose of the RFP (including 15% plan) requirement is to ensure attainment of the ozone standard by the attainment date applicable under the CAA. If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled, thereby meeting the statutory requirement, and EPA does not believe that the area need submit revisions providing for further emissions reductions.

Comment #13—The commenter had serious reservations as to the adequacy of EPA's conclusion that the TN SIP satisfies the requirements of Section 110(a)(2) of the CAA, given the unresolved status of the revisions on which the redesignation is contingent described in the proposal. The commenter believes a more thorough evaluation of the SIP by EPA is warranted prior to any further consideration of the redesignation.

Response—As stated in the response to comment 1, section 107(d)(3)(E) stipulates that a redesignation of a nonattainment area to attainment may not be promulgated unless conditions (i) through (v) have been met; in the proposed rule, the redesignation was not promulgated. As of this final action, the State has met all of the requirements in section 107(d)(3)(E)(ii). EPA believes, as previously stated, that the State has met all of the requirements in section 107(d)(3)(E), including all requirements applicable to the area under section 110. The evaluation of the Tennessee SIP is described in detail in section 2 of the supplementary information in the proposed rule.

Comment #14—The commenter took exception to the use of EPA's diluted redesignation guidance (Seitz memo, May 10, 1995). They further state that most EPA guidance includes procedural devices facilitating redesignation requests by suspending requirements of SIP revisions, which is inconsistent with section 107(D)(3)(E). The commenter also asserts that EPA cannot use the 1995 Seitz memorandum to substitute its own criteria for redesignation over congressional instruction.

Response—EPA does not believe that the 1995 Seitz memorandum is being used to substitute EPA's own criteria for redesignation over congressional instruction. The memorandum sets forth EPA policy to address whether areas must submit SIP revisions concerning requirements necessary to attain the ozone standard once an area has attained the standard. As stated in the response to comment 12, if an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled, thereby meeting the statutory requirement, and EPA does not believe that the area need submit revisions providing for further emissions reductions as long as the area continues to meet the standard. EPA does not believe that this policy is inconsistent with section 107(D)(3)(E).

Comment #15—The commenter stated that utilizing the 1995 Seitz memorandum to render inapplicable CAA sections 172(c)(2) and 182(b)(1) requirements jeopardizes the Nashville request by making it susceptible to revocation if subjected to judicial review.

Response—EPA has not utilized the 1995 Seitz memorandum to render CAA sections 172(c)(2) and 182(b)(1) requirements inapplicable; the memorandum determines that if the purpose of a requirement has already been fulfilled, the statutory requirement has been met, and the area need not submit further SIP revisions regarding a requirement that has been fulfilled.

Comment #16—The commenter stated that they believe that it is in the best interests of the Nashville region that EPA stay action on redesignation requests for ozone nonattainment areas in the states participating in OTAG until regional ozone precursor emission strategies are proposed and implemented, and the same should apply to NO_X waivers in the OTAG domain.

Response—Section 107(D)(3)(E) does not provide for incorporating OTAG strategies in redesignations, nor does section 182(f) for NO_X exemptions. EPA believes the Tennessee request has met all of the requirements in section 107(D)(3)(E) and is approving the redesignation in this final action.

Final Action

In this final action, EPA is approving the Nashville O_3 maintenance plan, including the 1990 baseline inventory and the 1994 base year inventory, because it meets the requirements of section 175A. In addition, EPA is redesignating the Nashville area to attainment for O_3 because the State of Tennessee has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA believes all comments received have been adequately addressed and is therefore proceeding with approval of this action.

The O_3 SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the O_3 NAAQS. This final redesignation should not be interpreted as authorizing the State of Tennessee to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved O_3 SIP. Changes to O_3 SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in a finding of nonimplementation [section 179(a) of the CAA] or in a SIP deficiency call made pursuant to sections 110(a)(2)(H) and 110(k) of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. Sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Granting the ozone redesignation makes less burdensome the requirements on those small entities in the Nashville area that are regulated under the State's ozone control plan. Accordingly, the Administrator hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 30, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 11, 1996.

John H. Hankinson, Jr.,

Regional Administrator.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(144) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(144) The maintenance plan and redesignation request for the Nashville Area which includes Davidson, Rutherford, Sumner, Williamson, and Wilson Counties submitted by the Tennessee Department of Environment and Conservation on November 14, 1994, August 9, 1995, and January 19, 1996, as part of the Tennessee SIP.

(i) Incorporation by reference.

The following sections of the document entitled Request for Redesignation of the Middle Tennessee Non-attainment Area from Moderate Non-attainment to Attainment of the National Ambient Air Quality Standard for Ozone and the Maintenance Plan: 2.0 Attainment Demonstration; 3.0 Maintenance Demonstration; 4.0 Contingency Plan; and Appendix 4 Summaries of Projected Emissions for VOC, NO_X, and CO adopted on January 10, 1996.

(ii) Other material. None.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

2. In § 81.343, the ''Tennessee-Ozone'' table is amended by removing the Nashville area and its entries in the first alphabetical list and by adding in alphabetical order entries for ''Davidson County'', ''Rutherford County'', ''Sumner County'', ''Williamson County'', and ''Wilson County'' to the second listing of counties; and by revising the entry ''Rest of State'' to read ''Statewide''.

§ 81.343 Tennessee

* * * * *

TENNESSEE—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide	Unclassifiable/Attainment.			
* *	*	*	*	*
Davidson County	Oct. 30, 1996.			
* *	*	*	*	*
Rutherford County	Oct. 30, 1996.			
* *	*	*	*	*
Sumner County	Oct. 30, 1996.			
* *	*	*	*	*
Williamson County	Oct. 30, 1996.			
* *	*	*	*	*
Wilson County	Oct. 30, 1996.			
* *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 96–27606 Filed 10–29–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AD–FRL–5642–1]

Clean Air Act Final Interim Approval of Operating Permits Program; Arizona; Direct Final Interim Approval of Operating Permits Program; Pinal County Air Quality Control District, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval; direct final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Arizona, which comprises programs from the Arizona Department of Environmental Quality (ADEQ), the Maricopa County Environmental Services Department, (Maricopa), the Pima County Department of Environmental Quality (Pima), and the Pinal County Air Quality Control District (Pinal) for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources, and to certain other sources. The EPA is also taking direct final action to promulgate interim approval of specified portions of the Pinal County Operating Permits Program submitted by ADEQ on behalf of Pinal County on August 15, 1995. These specified portions of the program reflect changes to the permitting regulation that was part of Pinal's original program submittal.

DATES: The final interim approval of the Arizona program is effective on November 29, 1996. The direct final interim approval of the specified portions of the Pinal County program as codified in paragraph (d)(2) of the Arizona entry of Appendix A to part 70, is effective on December 30, 1996 unless adverse or critical comments are received by November 29, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State and county submittals and other supporting information used in developing the final interim approval and direct final interim approval are available for inspection (docket number AZ–95–1–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Regina Spindler (telephone 415–744–1251), Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program. On July 1, 1996, EPA promulgated the part 71 regulations that govern EPA's implementation of a federal operating permits program in a state or tribal jurisdiction. See 61 FR 34202. On July 31, 1996, EPA published a notice at 61 FR 39877 listing those states whose part 70 operating permits programs had not been approved by EPA and where a part 71 federal operating permit program was therefore effective. In that notice EPA stated that part 71 is effective in the State of Arizona. The EPA also stated its belief that it would promulgate interim approval of the Arizona part 70 program prior to the deadline for sources to submit permit applications under part 71. Today's action cancels the applicability of a part 71 federal operating permits program in Arizona in those areas under the jurisdiction of the State and county agencies. The part 71 application deadline contained in the July 31, 1996 notice is now superseded by the State and county part 70 application deadlines.

On July 13, 1995, EPA published a notice of proposed rulemaking (NPR) in which it proposed interim approval of the operating permits program for ADEQ, Maricopa, Pima, and Pinal. See 60 FR 36083. The NPR identified several deficiencies in the State and county programs and proposed that the Arizona agencies make specified changes to correct those deficiencies as a condition of full approval. The EPA received public comment on the proposal and is responding to most of those comments in this document. The EPA has addressed all of the comments received on the proposal in a separate ''Response to Comments'' document contained in the docket at the Regional Office. After considering the comments, EPA determined that some of the changes proposed in the NPR are not necessary. In this final interim approval, EPA has therefore modified the list of changes (''interim approval issues'') that was set forth in section II.B.1. of the NPR. The public comments that prompted EPA to modify the list are discussed below in II.B. along with other issues raised during the public comment period. In addition, ADEQ, on behalf of Pinal County, has submitted a revised operating permits program for Pinal. Some of the revisions to the list of interim approval issues for Pinal result from revisions to the Pinal program that the County made in response to EPA's NPR. These revisions to the Pinal program are also discussed in section II.B. of this rulemaking. Revisions to portions of the Pinal program that were not addressed by EPA's NPR are discussed in III.A. below. The EPA is taking direct final action to promulgate interim approval of these changes to the Pinal operating permits program.

The EPA's NPR also proposed approval, under section 112(l), of the State and county programs for accepting delegation of section 112 standards as promulgated. The EPA received public comment on this proposed action for the Pinal County program only, as is discussed below in II.B.

In this document EPA is taking final action to promulgate interim approval of the operating permits programs for ADEQ, Maricopa, Pima, and Pinal. In this document EPA is also taking final action to approve, under section 112(l), these agencies' programs for accepting delegation of section 112 standards as promulgated. Finally, EPA is taking direct final action today to promulgate interim approval of specific changes to the Pinal County operating permits program.

II. Final Action and Implications

A. Analysis of State Submission

The title V programs for ADEQ, Maricopa, Pima, and Pinal were submitted by ADEQ on November 15, 1993. Additional material was submitted by ADEQ on March 14, 1994; May 17, 1994; March 20, 1995; and May 4, 1995. Additional information was submitted by Maricopa on December 15, 1993; January 13, 1994; March 9, 1994; and March 21, 1995. Additional information was submitted by Pima on December 15, 1993; January 27, 1994; April 6, 1994; and April 8, 1994. On Pinal's behalf, ADEQ submitted a revision to Pinal's program on August 16, 1994. On July 13, 1995, EPA proposed interim approval of The Arizona State title V operating permits program in accordance with § 70.4(d), on the basis that the program ''substantially meets'' part 70 requirements. Additional material submitted by the State and county agencies in response to EPA's NPR is referenced below in II.B. in the discussion of public comments.

The analysis of the State submittal given in the July 13, 1995 proposed action is supplemented by the discussion of public comments made on the NPR, including the discussion of the additional material submitted by the State and county agencies, and the resulting changes to the interim approval issues list. Otherwise, the analysis in the proposed document remains unchanged and will not be repeated in this final document. The program deficiencies identified in the proposed document have been modified as discussed below in II.B. The program deficiencies that remain, however, must be corrected for the State and counties to have fully approvable programs. These program deficiencies, or interim approval issues, are enumerated in II.C. below.

B. Public Comments and Responses

The EPA received comments on the NPR for the Arizona program from fifteen interested parties. The majority of the comments are discussed below. Comments that are not addressed in this document are addressed in a separate ''Response to Comments'' document contained in the docket (AZ-95–1–OPS).

Several commenters expressed a general concern that sources which have already submitted permit applications in accordance with the existing Arizona regulations should not be required to submit new applications due to program deficiencies identified by EPA in this document. The EPA is therefore clarifying that today's final interim approval of the Arizona program authorizes the State and county agencies to implement the interimly approved programs as the title V operating permits program for a period of two years. The EPA has identified certain deficiencies in the program that must be corrected by the end of this two year period but until that time, the agencies may implement the program in accordance with the interimly approved regulations cited in today's document. Therefore, sources that have submitted applications in accordance with these regulations need not reapply. The applications will not be deemed incomplete or returned for revision solely because the permit application relies upon the Arizona agencies' interimly approved regulations. If an applicant submitted a timely and complete application in accordance with these regulations, its application shield is not jeopardized by changes to the interimly approved regulations that the State or county agencies may make. Other comments on the July 13, 1995 proposal are discussed below.

1. Insignificant Activities

Section 70.5(c) provides that states may develop as part of their program, and EPA may approve, a list of insignificant activities and emissions levels that need not be included in permit applications but that applications may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fees. Several commenters disagreed with EPA's requirement in the NPR that all activities identified as insignificant by the Director of ADEQ must first be approved by EPA. The EPA proposed that in order to receive full approval, ADEQ must remove the provisions in its current title V regulation that gives the Director the discretion to identify activities as insignificant without prior EPA approval. These commenters argued that § 70.5(c) provides only that EPA may approve a list of insignificant activities as part of a permitting authority's title V program and by including discretionary authority as one item on the list, ADEQ has met the requirements of § 70.5(c). They also argued that nothing in § 70.5(c) suggests that all insignificant activities must be submitted to EPA in the form of a rule and requiring so would unnecessarily limit the flexibility of states to identify new insignificant activities as they arise. The commenters also stated that EPA would have opportunity to review such newly designated insignificant activities when it receives permit applications identifying such activities. Several commenters also cited the discussion in EPA's July 10, 1995 ''White Paper for Streamlined Development of Part 70 Permit Applications'' (''White Paper'') of trivial activities. They argued that the discretion allowed permitting authorities by EPA to list additional items as trivial should also be extended to insignificant activities.

The EPA's reading of § 70.5(c) is that EPA must approve as part of a state's title V program any activities the state considers to be insignificant. The EPA's ''White Paper'' also states that activities that are not clearly trivial ''still need to be approved by EPA before being added to State lists of insignificant activities.'' The EPA therefore does not agree that the reasons offered by the commenters are adequate to support full approval of the State rule provision discussed here. However, EPA does believe this provision is fully approvable for the reasons discussed in the following paragraph.

ADEQ's rule clearly states that certain activities may be considered insignificant only if the emissions unit ''is not otherwise subject to any applicable requirement.'' (Arizona Administrative Code (AAC) R18–2–101(54)) AAC R18–2–304(E)(7) requires that all insignificant activities be listed in the permit application. This goes beyond the § 70.5(c) requirement that ''for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application.'' The preamble to the final part 70 rule clarifies the distinction. It discusses a boiler that is insignificant because it is below a specified size as an example of an insignificant activity that is exempted because of size and would be required by § 70.5(c) to be listed in the application. It goes on to state that for insignificant activities ''which apply to an entire category of activities, such as space heaters, the application need not contain any information on the activity.'' [57 FR 32273, July 21, 1992] ADEQ does not distinguish its insignificant activities in this way and instead requires that all insignificant activities be listed in the application. The ''White Paper'' generally provides that sources need only submit detailed emissions information on emissions units as necessary to determine the applicability of requirements, to verify compliance, and to compute permit fees. The EPA believes that ADEQ's handling of insignificant activities is consistent with this discussion. By requiring all insignificant activities to be listed, ADEQ provides that information on all emission units will be included in the application. Any units that are subject to applicable requirements may not be considered insignificant and the source must provide more detailed information for those units. It therefore is appropriate that the Director of ADEQ may allow activities other than those on the list submitted as part of its title V program to be merely listed in the application. Because these activities would be listed in the application, ADEQ and EPA would have an opportunity to review the list and request additional information if they believed the activity did not qualify as insignificant.

Regarding the proposal that ADEQ submit a demonstration to EPA that the specific activities listed in R18–2–101(54)(a-i) are truly insignificant, EPA has further evaluated the activities on this list and found that they do qualify for treatment as insignificant in the title V application because their exclusion is not likely to interfere with determining or imposing applicable requirements in the State or with the determination of fees. Therefore, no further demonstration is necessary.

The EPA is therefore revising its proposal regarding insignificant activities. The EPA is eliminating ADEQ's interim approval issue regarding insignificant activities and finds that the provisions in ADEQ rules regarding insignificant activities are fully approvable.

In the July 13, 1995 proposal, EPA stated that Pinal County's 200 pound per year insignificant activity threshold may not be appropriate for units emitting hazardous air pollutants (HAP) and proposed that in order to receive full approval Pinal must demonstrate that this threshold level is insignificant compared to the level of HAP emissions from units required to be permitted. The EPA also proposed that Pinal demonstrate that the insignificant activities specifically listed in its program are truly insignificant. Pinal County commented that they have no objection to adopting lower thresholds for HAPs (such as § 112(g) de minimis levels) that EPA may set by rule but that they should not be required to submit a demonstration that their listed activities are truly insignificant until EPA establishes by rule what qualifies as insignificant.

The EPA has further evaluated the activities specifically listed by Pinal in its definition of ''insignificant activity'' and determined that they are acceptable because their exclusion is not likely to interfere with determining or imposing applicable requirements in the County or with the determination of fees. The EPA has also reevaluated its proposal regarding Pinal's emissions threshold definition of ''insignificant activity'' in light of the ''White Paper'' guidance on permit applications. Pinal's rule (PCR § 3–1–050(E)) provides that title V applications need not contain emissions data regarding insignificant activities but that all insignificant activities must be listed in the application. Pinal's definition of ''insignificant activity'' excludes any activities subject to an applicable requirement (PCR § 1–3–140(74a)). As discussed above regarding ADEQ's insignificant activity provisions, EPA believes that this approach is consistent with the ''White Paper'' guidance. Pinal is assuring that information on all emission units will be included in the application by requiring insignificant activities to be listed and that more detailed information, including emissions information, will be provided for those units subject to applicable requirements. The EPA believes that the 200 pound per year threshold used to define insignificant activities in Pinal's regulation is appropriate for the County given these other provisions in the rule. The EPA is, therefore, eliminating the proposed interim approval issue regarding Pinal's insignificant activities and finds that these provisions are fully approvable.

The EPA did not receive any comments specific to its proposal regarding Pima's insignificant activities provision. Pima's rule (PGC § 17.12.160(E)(7)) provides that emission units that do not emit more than 2.4 pounds per day of VOC or 5.5 pounds per day on any other regulated air pollutant must be listed in the application but the application need not provide detailed information on these units. The EPA stated in its proposal its concern that the emissions thresholds may not be acceptable for defining insignificant activities for HAP. The EPA also stated in the proposal that Pima must restrict such insignificant emission units to those that are not likely to be subject to an applicable requirement. The EPA now believes that if Pima adds the restriction that emissions units that are subject to any unit-specific applicable requirements may not be eligible for treatment as insignificant, then the County's treatment of insignificant emission units will be consistent with the ''White Paper'' guidance as discussed above regarding the ADEQ and Pinal insignificant activity provisions. With the ''applicable requirement'' restriction, and the requirement that all insignificant emission units be listed in the application, EPA believes that the emissions thresholds described above are appropriate for Pima County. The EPA is therefore modifying the proposed interim approval issue accordingly. (See II.C.1.c.3 below.)

Maricopa County's Regulation II, Rule 210, section 301.5(g) allows that emissions information for activities included in an extensive list (MAPC Regulation II, Rule 200, section 303.3(c)) need not be included in applications though the activities themselves must be listed in the application. The EPA proposed that Maricopa be required to submit a demonstration that the activities are truly insignificant and not likely to be subject to an applicable requirement. Alternately, EPA proposed that Maricopa restrict the exemptions to activities that are less than County-established emission levels and that are not likely to be subject to an applicable requirement. The EPA believes that there are items on Maricopa's list that could emit significant amounts of pollutants and/or that could be subject to non-general applicable requirements. Maricopa County Environmental Services Department was the only commenter that addressed EPA's proposal on Maricopa's insignificant activities provision. Maricopa responded that they agree to provide EPA with a demonstration that the activities are truly insignificant and not likely to be subject to an applicable requirement and also to revise Rule 200 to include emissions and/or operation limits for the activities as necessary. The EPA is requiring, therefore, that for full approval Maricopa must demonstrate that the activities on its list are insignificant. It must revise the list to ensure that nothing on the list will be subject to a unit-specific requirement. In some cases, this may require removing some items from the list completely. Another option is to add emissions cut-offs or size limitations to items on the list to ensure that the listed activities are below any applicability thresholds for applicable requirements.

Several commenters took exception to EPA's proposal that one way to identify insignificant activities is to set emissions limits. The commenters argue that this contradicts both the purpose of establishing insignificant activities and the ''White Paper.'' They contend that establishing an emissions cutoff for insignificant activities would require sources to quantify and document the level of emissions from insignificant activities in an effort to show that they do indeed qualify as insignificant. This emissions quantification, they argue, is exactly what the concept of insignificant activities and the ''White Paper'' discussion of application content intended to avoid. The purpose of the insignificant activities exclusion, they say, is to relieve sources from the obligation to develop and submit detailed information about activities that are not relevant to determining fees or the applicability of CAA requirements. The commenters also cite the ''White Paper'' discussion which says that emissions estimates should not be required when they serve no useful purpose.

While EPA is not requiring that states set an emissions level cutoff to define insignificant activities, the agency maintains that it is acceptable to do so as long as such levels are insignificant compared to the level of emissions from units that are subject to applicable requirements. The EPA also believes that where a state's list of insignificant activities contains activities that may be significant if emitting above a certain level, then imposing an emissions cap on the list will ensure that the activities are truly insignificant. As to the comment that emissions cutoffs defeat the purpose of an exemption, EPA notes that Pima and Pinal Counties chose to define insignificant activities in this way. The EPA's proposal merely expressed the concern that the chosen levels may be too high. As discussed above, EPA now believes the emissions thresholds set by Pima and Pinal to be acceptable in their jurisdictions given the other conditions placed on emissions units to be treated as insignificant in these counties.

2. Excess Emissions

Numerous parties commented on EPA's proposal to require ADEQ to clarify that its excess emissions affirmative defense provision does not apply to part 70 sources. They challenged EPA's authority to assert that part 70 programs may not contain an affirmative defense for excess emissions beyond that provided in section 70.6(g) for emergency situations and cited section 70.6(g)(5) which provides that the emergency affirmative defense ''is in addition to any emergency or upset provision contained in any applicable requirement.'' They contend that ADEQ's excess emissions provision is necessary because part 70 sources will have unavoidable excess emissions for purely technological reasons and not emergencies as described in section 70.6(g). Many sources, they argue, are unable to maintain emissions below applicable emissions limits during startup and shutdown events as well as during malfunctions. They also cite EPA's recognition of this situation in many NSPS regulations which provide that emission limits do not apply during periods of startup, shutdown, and malfunction. The commenters also pointed out that the purpose of title V is not to impose new substantive requirements but to set forth all requirements that apply to a source in a single document. They assert that establishing the emergency provision of section 70.6(g) as the only defense for violations would increase the stringency of EPA's NSPS regulations and Arizona State rules. By prohibiting an affirmative defense that has been in Arizona regulations for many years, they argue, EPA will create new standards for sources. The commenters also referred to EPA's September 22, 1986 proposal to approve the ADEQ excess emissions provision as part of the SIP. They argued that if EPA had finalized its action on this rule then there would be no question as to its applicability to part 70 sources.

The EPA agrees that it is not the purpose of title V to create any new substantive requirements for sources but rather to assure source compliance with federal applicable requirements. The EPA's proposal to not fully approve a provision that would allow sources an affirmative defense to noncompliance with federal applicable requirements is fully consistent with this purpose. The EPA does recognize that there are times when it is technologically infeasible for sources to comply with applicable emissions limits. This rationale was behind the promulgation of the 70.6(g) affirmative defense. Moreover, where EPA, in promulgating individual standards, has found that it is necessary to provide relief from compliance during such periods, it has done so. Several NSPS and recently promulgated NESHAP allow, as commenters noted, that standards apply at all times except periods of startup, shutdown, and malfunction. Similarly, a state could, within a specific source category rule approved into the SIP, provide such relief where appropriate.

The section 70.6(g)(5) provision which recognizes upset provisions ''in addition'' to the § 70.6(g) emergency defense is intended to confirm that startup, shutdown, and malfunction provisions contained in specific federal applicable requirements will continue to have effect once those requirements are incorporated into part 70 permits. Section 70.6(g)(5) does not imply that affirmative defenses may be established beyond those found in the applicable requirements or in § 70.6(g). AAC R18–2–310 (Rule 310) is broader that § 70.6(g), and moreover would provide a defense to noncompliance with federal applicable requirements where the applicable requirement itself requires compliance. By approving such a provision, EPA would be granting authority to the State to change applicable requirements through title V beyond what § 70.6(g) specifically allows.

The EPA is not increasing the stringency of the Arizona SIP rules by not approving Rule 310 into the State's title V program. Because Rule 310 has never been approved into the SIP, the provisions of Rule 310 have never been part of these federal applicable requirements. Regardless of whether such provisions have existed as a matter of Arizona State law, they have never had legal effect as a matter of federal law. It follows that Arizona's SIP rules will be no more stringent when incorporated into the title V permit. Similarly, because Rule 310 never applied to NSPS and other federal standards, they will be no more stringent after incorporation into the title V permit. As section 70.6(g)(5) confirms, any exemptions or defenses included in these federal requirements will still be available once the requirements are incorporated into the title V permit, along with the emergency defense allowed by § 70.6(g).

As to the comments regarding EPA's 1986 proposed approval of Arizona's excess emissions provision, EPA did not finalize its action on the excess emissions rule and therefore this rule is not part of the SIP and does not affect any federally enforceable applicable requirement. The EPA has informed ADEQ that it would not approve such a broadly applicable rule into the SIP because it is inconsistent with EPA's policy on excess emissions. *See* EPA's ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions'' from Kathleen Bennett dated September 28, 1982 and as revised on February 15, 1983.

The EPA maintains that a fully approvable part 70 program must not provide for an affirmative defense to violations beyond that provided by the section 70.6(g) emergency provision. AAC R18–2–310 is therefore not fully approvable because it is a more broadly applicable provision than the section 70.6(g) emergency defense. Rather than being limited to emergencies, it applies during startup, shutdown, malfunction, and scheduled maintenance. It is also available as a defense to violations of all standards while section 70.6(g) applies only to technology-based standards. For full approval, ADEQ must correct these deficiencies such that its rule is consistent with section 70.6(g) (see II.C.1.a.5 below). During the interim approval period, however, ADEQ may implement its title V program according to the regulations receiving interim approval in today's action, including the AAC R18–2–310 excess emissions affirmative defense provision.

3. Criminal Affirmative Defense/ Material Permit Conditions

The EPA received a number of comments regarding the affirmative defense to criminal prosecution for violation of emission and opacity requirements and the revisions to the regulatory definitions of material permit condition EPA proposed in sections II.B.1.a.9., II.B.1.b.3, II.B.1.c.8, and II.B.1.d.9. of the NPR. ADEQ and a number of industry commenters opposed EPA's proposed revisions. ADEQ's comments explained that the types of permit conditions which EPA had proposed to add to the regulatory definition are already covered by existing statutory provisions. After reviewing these provisions (Arizona Revised Statutes (ARS) §§ 49–464(C), (G), (J), and (U)), EPA defers to the State's interpretation of the statute and is therefore removing the requirements to revise the definition of material permit condition in the State and county regulations. The EPA is, however, finalizing the requirement that ADEQ clarify that a material permit condition may be contained in a permit or permit revision issued by the Control Officer of a county agency as well as by the Director of ADEQ. (See II.C.1.a.6 below.)

One commenter felt that the State regulatory definition of material permit condition was also deficient in that it covers only those emission limits imposed to avoid classification as a major source or modification or to avoid triggering other requirements. Such requirements are commonly referred to as synthetic minor restrictions. While these limits can be federally enforceable, they are not required under the federal CAA in the same way that other emission limits are because they are opted into by the source voluntarily to avoid other requirements. Thus, ADEQ included such limits in the definition of material permit condition to fill a perceived gap. However, as ADEQ pointed out in its comment letter, the criminal violation of emission limits in general is specifically covered by ARS § 49–464(C). ARS § 49–464(G) makes it clear that emissions limit violations are to be addressed under subsection (C). The commenter also argued that R18–2–331(B) incorporates the excess emissions defense which EPA has cited as an interim approval issue. The EPA disagrees with this analysis. This provision does not provide a defense; rather it decreases the available criminal charge from a felony to a misdemeanor in a narrowly proscribed set of circumstances.

4. Public Notice

ADEQ, the Arizona Chamber of Commerce, and the Arizona Mining Association (AMA) disagreed with EPA's proposal to require revision of the Arizona agencies' rules to allow for providing ''notice by other means if necessary to assure adequate notice to the affected public.'' All three parties contend that the public notice provisions in the State and county rules go well beyond the minimum federal requirements and will allow for more than adequate notice to the affected public. AMA also argued that the addition of a vague and indefinite requirement for additional notice could lead to litigation claiming that issued permits are invalid because public notice was inadequate. While EPA recognizes that the State and county notice provisions are quite extensive, there may be certain instances when the agencies must use alternative means not specifically provided for in their rules to reach a particular community or group of people that may be affected by a permitting action. On July 22, 1996, the Office of the Attorney General of Arizona submitted a supplement to the Attorney General's opinion in response to EPA's proposal on this matter. This supplement cites ARS 49–104(B)(3) which gives ADEQ the power to ''utilize any medium of communication, publication and exhibition in disseminating information, advertising, and publicity in any field of its purposes, objectives and duties.'' This, in the Attorney General's opinion, gives ADEQ the power to provide notice by any means as necessary to assure adequate notice to the affected public. The EPA is deferring to the Attorney General's opinion, and is therefore eliminating the interim approval issue regarding the public notice provision (see II.B.1.a.8 of the NPR) identified in the proposed interim approval of ADEQ's program.

Neither the Attorney General's Office, nor the county attorney's offices, submitted a statement citing a provision in State or county law that gives similar broad authority to the counties. Maricopa stated in its comment letter on the proposed interim approval and also in a letter from the County Attorney submitted on August 5, 1996 that its rule was revised in February, 1995 to authorize notice by other means necessary to assure adequate notice. Pinal County revised its rules to add such a provision to its public notice procedures (Pinal County Code of

Regulations (PCR) § 3–1–107(C)(3)) and Pima has also added such a provision to its rules. Pinal submitted its revised rules, including the revised section 3–1–107(C)(3), as a revision to its title V program submittal on August 15, 1995 and therefore EPA is eliminating the interim approval issue for Pinal's program related to public notice (see II.B.1.d.8. of EPA's July 13, 1995 proposal) such that Pinal's public notice procedures are now fully approvable. Maricopa and Pima have not submitted their revised rules as revisions to their title V programs and thus EPA must finalize action on the Maricopa and Pima public notice provisions as proposed (see II.C.1.b.11 and II.C.1.c.6 below). The EPA recognizes, however, that once Maricopa and Pima submit their revised rules for approval under title V, the public notice provisions regarding notice by other means necessary to assure adequate notice will be fully approvable.

5. Public Access to Records

The Arizona Center for Law in the Public Interest (ACLPI) commented that the Arizona State program does not meet the Clean Air Act requirement (§ 7661a(b)(8)) that state permit programs include the authority and procedures to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report. ACLPI argues that ARS § 49–432 allows a source to declare a wide variety of information confidential, and therefore unavailable to the public, upon submittal to the permitting authority. ACLPI argues further that the burden is on the permitting authority to demonstrate in court that the information does not qualify as confidential and that there is no avenue of redress for a citizen if the permitting authority chooses not to contest a claim of confidentiality.

The Attorney General's opinion submitted as part of the State program addresses public access to permit information. The Attorney General states that AAC R18–2–305(A) provides that all permits, including all elements required to be in the permit pursuant to AAC R18–2–306, shall be made available to the public and that no permit may be issued unless the information required by AAC R18–2–306 is present in the permit. The Attorney General goes on to state that the Director of ADEQ has 30 days to determine whether the information satisfies the requirements for trade secret or competitive position pursuant to ARS § 49–432(C)(1) and if the Director decides that the material does not satisfy these requirements, he may direct the Attorney General's office to seek a court order authorizing disclosure. The Attorney General further asserts that the ''burden of proof in a court proceeding is on the party asserting the affirmative of an issue, the claimant. The statute in question shifts the burden of proceeding but does not shift the burden of proof.'' He also states that if the Director disagrees with a permit applicant's assertion of confidentiality, the permit application is incomplete until the disagreement is resolved.

The regulations clarify this interpretation. AAC R18–2–305(B) requires that any notice of confidentiality submitted pursuant to ARS § 49–432(C) must contain sufficient supporting information to allow the Director to evaluate whether such information satisfies the requirements related to trade secrets or how the information, if disclosed, is likely to cause substantial harm to competitive position. AAC R18–2–305(C) further provides that the Director shall make a determination as to whether the information satisfies the requirements for trade secret or competitive position and notify the applicant. Only if the Director agrees that the applicant's notice satisfies the statutory requirements will the Director attach a notice to the applicant's file that certain information is confidential.

The EPA defers to the opinion of the Attorney General that Arizona's confidentiality provisions will not interfere with the public's access to information intended to be public under title V. If EPA finds, however, that Arizona is routinely withholding information that EPA would release to the public under federal confidentiality provisions, EPA will revisit this portion of the program approval. The EPA also notes that AAC R18–2–304(F) requires a source that is applying for a title V permit and has submitted information under a claim of confidentiality to submit a copy of that information directly to EPA. The release of this information to the public by EPA would be governed by federal confidentiality provisions under § 114(c) of the Act.

6. Exemption of Agricultural Activities

ACLPI commented that the Arizona program exempts from permitting ''agricultural vehicles or agricultural equipment used in normal farm operations'' (ARS § 49–426.01) and that title V does not allow for such an exemption. ACLPI further commented that ADEQ's regulatory definition of ''agricultural equipment used in normal farm operations'' as not including equipment that would require a title V permit could be readily challenged by farm interests as not reflecting the plain language of the statute.

The Attorney General's Opinion submitted as part of ADEQ's title V program states that in granting ''agricultural equipment used in normal farm operations'' an exemption from the permitting requirement, the ''legislature sought in no way to exempt any major sources.'' The opinion goes on to state that AAC R18–2–302(C)(3) clarifies this point by providing that ''agricultural equipment used in normal farm operations'' does not include equipment that requires a permit under title V or is subject to a standard under 40 CFR parts 60 or 61. The EPA defers to the opinion of the Attorney General regarding this issue. However, if, as ACLPI suggests, a successful legal challenge to the regulation occurs, EPA will revisit this portion of the program approval.

7. Deadline for Permit Applications

ACLPI commented that ADEQ's rules do not require all sources to submit applications within 12 months of EPA approval of the State's program. ACLPI references AAC R18–2–303(E) which provides that permit applications that were determined to be complete prior to the effective date of ADEQ's rules shall be deemed complete for title V purposes and that the Director shall include a compliance schedule in the source's permit for submitting a title V application according to the newly effective rules. ACLPI argues that because there is no time limit on the compliance schedule it could go beyond the title V statutory requirement. ACLPI also commented that there is no deadline for Class II sources (non-title V) to submit permit applications other than 180 days from a written request from the Director.

AAC R18–2–303(E) allows that permits issued to sources whose applications were deemed complete prior to the effective date of ADEQ's rules shall contain a schedule of compliance for submitting an application to address the additional elements that were not included in the original application. The EPA considers this a reasonable approach since sources that submitted applications prior to the rule's effective date prepared the application pursuant to ADEQ's permit application requirements in effect before the new rules were adopted. AAC R18–2–303(B) contains a schedule by which existing sources requiring a Class I permit (title V permit) must submit permit applications. The last date that any source requiring a Class I permit could submit its complete application was May 1, 1995, well in advance of EPA's statutory deadline. The EPA considers AAC R18–2–303(B) to be the permit application deadline for all Class I sources, regardless of whether that source had submitted an application prior to the effective date of the ADEQ rules.

Regarding the application deadline for Class II operating permits, as these are state-only enforceable permits and not title V permits, they need not meet the requirements of title V.

The EPA's NPR did identify a deficiency with the application deadline as applied to certain existing sources that are not Class I sources during the initial phase of the program but that later become Class I sources after obtaining Class II permits. The EPA's proposal included a requirement that ADEQ revise its regulation to include an application deadline (12 months from becoming subject) for existing sources that become Class I sources after initial permit issuance is complete. One example is a source with a Class II permit that removes operational limits such that it is no longer nonmajor. ADEQ's regulation contains a specific schedule for existing Class I sources to submit permit applications and does not contain a general requirement that all Class I sources submit applications within one year of becoming subject to Class I permit requirements. ADEQ argued in its comment letter that any existing source that makes a facility change or seeks to remove limits on its potential to emit such that it qualifies for a Class I permit is required to obtain a significant revision to its existing permit, or under AAC R18–2–302, if not previously regulated, a new Class I permit. The EPA agrees that the regulation requires a significant permit revision or new Class I permit prior to making the change in such cases but significant permit revisions normally address only the portion of the source and permit that is being modified and for any source obtaining its initial Class I permit, the entire permit must be subject to the full Class I permit issuance procedures including public comment and EPA review. ADEQ's regulation does not clearly provide that this would occur in the instances discussed above. The EPA has, therefore, finalized the interim approval identifying this as a deficiency that must be corrected but has clarified that the rule must be revised to ensure that an entire source is issued a permit under the Class I permitting procedures (see II.C.1.a.2 below).

The EPA also proposed requiring revisions to the county regulations to clarify that all existing title V sources must submit title V permit applications within 12 months of EPA's approval of the Arizona program and all sources that become subject after the program is approved must apply within 12 months of becoming a title V source. Maricopa and Pinal counties submitted comments that they intend to revise the rules accordingly. No parties commented on this proposed requirement for Pima. The EPA is therefore finalizing its action regarding the application deadline issue as proposed for Maricopa, Pima, and Pinal counties (see II.C.1.b.5, II.C.1.c.2, and II.C.1.d.5 below).

8. Conditional Orders

ACLPI commented that it believes Arizona's conditional order provisions are inconsistent with title V. ADEQ has authority under ARS § 49–437 through § 49–441 to grant a conditional order that allows a source to vary from any provision of ARS Title 49, Chapter 3, Article 2, any rule adopted pursuant to Article 2, or any requirement of a permit issued pursuant to Article 2. The county agencies have similar authority under ARS § 49–491 through § 49–495. In the NPR, EPA stated that it considers such conditional order provisions as wholly external to the program submitted for approval under part 70. In that proposal, EPA also described how the State and county regulations limit the applicability of the conditional order provisions. ADEQ provides that conditional orders may only apply to non-federally enforceable conditions of a permit and that issuance of a conditional order may not constitute a violation of the Act. The county regulations all provide that conditional orders may not be granted to part 70 sources. (Please see the July 13, 1995 NPR for more detail.) In consideration of the regulatory limitations placed on the issuance of conditional orders and the fact that EPA considers the statutory provisions to be external to the title V program, EPA believes it does have authority to approve Arizona's program without further regard to the conditional order provisions than was expressed in the NPR.

The EPA did propose that Pinal modify its conditional order provisions in PCR § 3–4–420 to provide that a conditional order may not be granted to vary from the requirement to obtain a title V permit. Pinal submitted a comment that it acknowledges the need for this correction. The EPA is finalizing this interim approval issue as proposed (see II.C.1.d.8 below).

9. Permit Renewal Provisions

The EPA proposed that the State and counties revise their regulations, in accordance with § 70.4(b)(10), to include a provision that a source's permit not expire until a renewed permit is issued or denied or, alternately, provide that the terms and conditions of the source's existing permit remain in effect until the permit renewal action is final. ADEQ informed EPA in its comment letter that ARS § 41–1064 provides that an existing permit does not expire until the issuing agency has acted on the application for renewal. The EPA agrees that this statutory provision satisfies the requirement of § 70.4(b)(10) for all the Arizona agencies and has eliminated the proposed interim approval issues regarding permit renewal accordingly (see II.B.1.a.7, II.B.1.b.8, II.B.1.c.6, and II.B.1.d.7 of the NPR). The EPA recognizes in this final interim approval action that Pinal County has clarified in its revised title V regulation under section 3–1–089 that any source relying on a timely and complete application as authority to operate after expiration of a permit must comply with the terms of the expired permit.

10. Fines for Fee and Filing Violations

As discussed in II.B.1.a.10, II.B.1.b.4, II.B.1.c.9, and II.B.1.d.10 of the NPR, EPA believed that ADEQ and the counties needed to revise their regulations to provide for adequate criminal penalties for knowing violations of fee and filing requirements. This proposal was based on EPA's evaluation of Arizona's statute, specifically ARS § 49–464(L)(3) and § 49–514(L)(3), which provide for criminal enforcement of fee and filing requirements due to criminal negligence only, which carries lower penalties than knowing violations.

ADEQ's comment stated that the "criminal negligence" standard covers knowing violations and that penalties associated with such violations are $20,000 maximum for each violation. The Arizona Attorney General's Office submitted a clarifying statement on July 22, 1996 citing ARS § 13–202(C) as providing that if "criminal negligence suffices to establish an element of an offense, that element also is established if a person acts intentionally, knowingly or recklessly * * *" The statement went on to say that ARS § 49–464(L)(3), therefore, already imposes criminal fines for knowing violations of fee or filing requirements and that the fine imposed may be up to $20,000 per violation for an enterprise (see ARS § 13–803). Because the penalty applicable to individuals is lower, and not adequate for title V purposes, it is important to establish that all permits are issued to enterprises. ARS § 13–105(12) defines an enterprise to include any corporation, association, labor union or other legal entity. The July 22, 1996 Attorney General's statement assured that air permits are issued only to enterprises because AAC § R18–2–304(B) provides that all air permits be issued only to businesses. Given that ARS § 49–480(B) requires that county permitting procedures be identical to ADEQ title V permitting procedures, EPA assumes that county title V permits may be issued only to businesses. The EPA is deferring to the Attorney General's interpretation of the relevant Arizona statutory and regulatory provisions as assurance that the State and county agencies have adequate enforcement authority for violations of fee and filing requirements and is therefore eliminating the interim approval issues regarding such authority as proposed in the NPR.

11. General Permit Public Notice Procedures

The EPA proposed that ADEQ and the counties revise their general permit public notice provisions to ensure that they contain all of the part 70 public notice requirements. Article 5 [general permit requirements] of ADEQ's rule provides that ''unless otherwise stated, the provisions of Article 3 [individual permit requirements] shall apply to general permits.'' The EPA is concerned, however, that because Article 5 contains specific public notice provisions and these provisions state that ''this section applies to issuance, revision or renewal of a general permit,'' that these would supersede the public notice provisions of Article 3. The Article 5 provisions do not contain all of the public notice requirements of part 70. The Attorney General's July 19, 1996 addendum clarified that in his opinion all public notice and hearing provisions contained in Article 3 of Regulation 18 of Chapter 2 of the AAC apply to general permits issued pursuant to Article 5. The EPA is deferring to the Attorney General's opinion and is therefore eliminating the interim approval issue for ADEQ as proposed in II.B.1.a.11 of its July 13, 1995 NPR.

Pinal County commented that following the County's regulatory revisions of February 22, 1995, PCR § 3–5–500, which contained public notice procedures for the issuance of general permits, has been repealed. The County rules, which were submitted as a title V program revision on August 15, 1995, no longer provide for local issuance of general permits. The EPA has eliminated the interim approval issue related to public notice for general permit issuance as proposed in II.B.1.d.12 of the July 13, 1995 NPR.

Maricopa and Pima provisions for general permit public notice are the same as the provisions in ADEQ's regulations. Because ARS § 49–480(B) requires county permitting procedures to be identical to procedures used by ADEQ, EPA assumes that the counties will interpret their regulations in the same way as the Attorney General has interpreted ADEQ's general permit public notice provisions. The EPA is therefore eliminating the interim approval issues for Maricopa and Pima as proposed in II.B.1.b.15 and II.B.1.c.10 of the NPR.

12. Title I Modification

In the NPR, EPA discussed its position that the definition of ''title I modification'' is best interpreted as not including changes reviewed under minor NSR programs or changes that trigger the application of a pre-1990 NESHAP requirement. The EPA stated that it considers the definitions of ''title I modification'' in the ADEQ, Maricopa, and Pinal programs, which are consistent with this interpretation, to be fully consistent with part 70. The EPA also found Pima's interpretation of ''title I modification'', which included minor source preconstruction review changes, to be consistent with part 70 since nothing in part 70 bars a state from considering minor NSR to be a title I modification.

Several commenters stated that they agree with EPA's interpretation that ''title I modification'' does not include minor NSR. The commenters also objected to EPA's approval of the Pima County interpretation of ''title I modification'' on the grounds that it is inconsistent with EPA's interpretation and also because it is contrary to Arizona State law which requires that county agencies have identical title V permit issuance procedures to ADEQ. On August 14, 1995, Pima County submitted a letter to EPA dated August 11, 1995, in which Pima's Director, David Esposito, informs EPA that in order to conform with these requirements of state law, Pima now interprets ''title I modification'' *not* to include changes reviewed under a minor source preconstruction review program, consistent with ADEQ's interpretation. The EPA recognizes this revised interpretation as the Pima County definition of ''title I modification'' being acted on today and finds that it is fully consistent with part 70.

Pinal County also submitted a comment suggesting a clarification of EPA's statement in the proposal that Pinal does not interpret ''title I modification'' to include changes reviewed under a minor source preconstruction review program. Pinal believes it is more accurate to state that: ''At least to the extent that a change does not trigger any additional applicable requirements, and merely requires *new* monitoring and recordkeeping requirements rather than modification of existing provisions, Pinal does not interpret 'title I modification' to include changes eligible for approval as 'off-permit' revisions under § 3–2–180 or minor permit revisions under § 3–2–190.'' Pinal went on to state that in general, changes at an existing source, including the addition of new emissions units, that do not involve ''significant'' increases in emission levels and do not trigger or violate applicable requirements may be processed as an ''off-permit'' revision or minor permit revision.

13. Applicability of the Pinal County Program

In the NPR, EPA indicated that in addition to major sources, affected sources, and solid waste incinerators, Pinal requires nonmajor sources subject to a standard under section 111 or section 112 to obtain a title V permit. Pinal County submitted a comment that while this statement accurately reflects the program as originally submitted on November 15, 1993 and amended on August 18, 1994, that on February 22, 1995, the County adopted revised rules that allow nonmajor sources regulated under sections 111 or 112 to defer or be exempted from the title V permit requirement to the extent allowed by the Administrator. See PCR § 3–1–040(B)(1)(b) and (c). Pinal submitted these revised regulations on August 15, 1995. The approach taken in Pinal's revised program is clearly consistent with part 70, represents the norm among State part 70 programs, and so would not have presented an issue at proposal had it been a feature of the originally submitted program. The EPA is therefore finalizing its interim approval of Pinal's program with this understanding of the applicability of the program.

This change in the applicability of Pinal's program affects EPA's approval under section 112(l) of Pinal's program for accepting delegation of section 112 standards as promulgated. The EPA stated in the NPR that requirements for approval under 40 CFR 70.4(b) encompass the section 112(l)(5) requirements for approval of a program for delegation of section 112 standards. Because Pinal's original program submittal included all sources subject to section 112 standards in the universe of sources subject to its title V permitting requirements, EPA's proposed approval of Pinal's program under section 112(l) extended to section 112 standards as applicable to all sources. In cases where a permit program has chosen to defer or exempt certain sources subject to section 112 requirements from the title V permitting requirement as allowed by EPA (e.g., nonmajor sources), approval under section 112(l) of the program for delegation extends to section 112 standards as applicable to only those sources that will receive title V permits. Pinal's program no longer applies to all sources subject to section 112 standards. On August 23, 1995, however, ADEQ submitted a separate request on behalf of Pinal for approval under section 112(l) of Pinal's program for seeking delegation of section 112 standards even insofar as they extend to sources that are deferred or exempted from the title V permit requirement under the Pinal program. (See letter from Donald Gabrielson, Pinal County Air Pollution Control Officer, to David Howekamp, Director, Air and Toxics Division, EPA Region IX, dated June 8, 1995.) Pinal refers to this request in its comment letter. Pinal's request for approval under section 112(l) references the information contained in Pinal's original title V program submittal as a demonstration that Pinal meets the criteria under section 112(l)(5) and section 63.91 for approval of a delegation program. The EPA is therefore finalizing its approval under section 112(l) of Pinal's program for delegation of section 112 standards as they apply to all sources. See II.C.2 below.

14. Major Source Definition in Pinal Program

In response to EPA's proposed interim approval issue regarding inclusion of HAP fugitive emissions in determining major source status (see II.B.1.d.2 of the NPR), Pinal commented that it has revised its definition of ''major source'' in PCR § 1–3–140(79)(b) accordingly. This revision was included in the revised Pinal program submitted on August 15, 1995. The EPA believes that this provision requires further revision, however, to clarify that fugitive emissions must be included in determining whether the source is major for purposes of both the 10 ton per year and 25 ton per year HAP major source thresholds. Currently, the phrase ''including any fugitive emissions of any such pollutants'' modifies only the 25 ton per year threshold. The EPA is modifying the interim approval issue to reflect this necessary clarification. See II.C.1.d.2 below.

The EPA's NPR also required Pinal to revise its ''major source'' definition to provide that fugitive emissions shall not be considered in determining whether it is a major source for purposes of section 302(j) of the Act unless the source belongs to one of the categories of sources listed in section 70.2 under the definition of ''Major source,'' paragraph 2, items (i) to (xxvii). Pinal commented that its revised program submittal addresses this issue. Pinal revised PCR § 1–3–140(79)(c) to include a provision for defining when fugitive emissions must be included in determining a sources potential emissions for purposes of title V applicability. This provision includes the list of categories as discussed above except for the final item on the list, namely ''all other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category.'' Instead, Pinal's definition of major source states that fugitive emissions shall be considered in determining whether a source is major for purposes of § 302(j) of the Act if the source is regulated by a standard promulgated as of August 7, 1980 under section 111 or section 112 of the Act or if a section 111 or section 112 standard expressly requires inclusion of fugitive emissions in determining major source status (PCR § 1–3–140(79)(c)(ii),(iii), and (iv)). This definition is not consistent with the current section 70.2 definition of ''major source'' and therefore is not fully approvable.

In today's final interim approval action on the Pinal County program, EPA is requiring that for full approval Pinal must revise its definition of major source to provide that fugitive emissions must be included in determining if a source is major for purposes of section 302(j) of the Act if that source belongs to a source category regulated by a standard promulgated under section 111 or section 112 of the Act, but only with respect to those pollutants that have been regulated for that category. See II.C.1.d.3 below. The EPA notes that it has proposed revisions to the major source definition with regard to the inclusion of fugitives in determining major source status. (See 59 FR 44527, August 29, 1994 and 60 FR 45565, August 31, 1995.) The EPA recognizes that Pinal may be required to revise its major source definition differently than described above should EPA finalize its proposed revisions to the major source definition prior to the date that Pinal must submit its revised program submittal.

C. Final Action

1. Title V Operating Permits Program

The EPA is promulgating interim approval of the operating permits program submitted by the Arizona Department of Environmental Quality on behalf of itself, the Maricopa County Environmental Services Department, the Pima County Department of Environmental Quality, and the Pinal County Air Quality Control District on November 15, 1993 as supplemented by additional materials as referenced in II.A and II.B of this document. The EPA is also promulgating interim approval of the portions of the revised Pinal County operating permits program submitted on August 15, 1995 that address the program deficiencies and other issues discussed in EPA's July 13, 1995 proposed interim approval. These provisions include Sections 1–3–140(79)(b) and 1–3–140(79)(c) of Article 3 of Chapter 1; Sections 3–1–040(B)(1), 3–1–089(C), and 3–1–107(C)(3) of Article 1 of Chapter 3; and Section 3–5–500 of Article 5 of Chapter 3 of the Pinal County Code of Regulations as adopted or revised on February 22, 1995. The remainder of the Pinal County revised program is addressed by the direct final action in section III of this document.

As discussed in II.A.2 of the NPR, this interim approval does not apply to the State and county operating permit programs for non-part 70 sources or to State and county preconstruction review programs. This interim approval applies only to that part of the State and county permit programs that provide for the issuance of Class I operating permits (in ADEQ), Title V operating permits (in Maricopa and Pima), and Class A operating permits (in Pinal).

This interim approval, which may not be renewed, extends until November 30, 1998. During this interim approval period, ADEQ, Maricopa, Pima, and Pinal are protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in Arizona. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State or county agencies fail to submit a complete corrective program for full approval by May 30, 1998, EPA will start an 18-month clock for mandatory sanctions. If the State or counties then fail to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State or counties have corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State or counties, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that the State or counties had come into compliance. In any case, if, six months after application of the first sanction, the State or counties still have not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the ADEQ, Maricopa, Pima or Pinal complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State or county agency has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State or county agency, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State or county agency has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State or counties have not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State or counties have not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the Arizona State or county agency program by the expiration of this interim approval, EPA must promulgate, administer and enforce a Federal permits program for the State or counties upon interim approval expiration.

Areas in which the Arizona program is deficient and requires corrective action prior to full approval are as follows:

a. Arizona Department of Environmental Quality. ADEQ must make the following changes, or changes that have the same effect, to receive full approval:

(1) Revise AAC R18–2–101(61)(b) to clarify that fugitive emissions of hazardous air pollutants must be considered in determining whether the source is major for purposes of both the 10 ton per year and 25 ton per year major source thresholds. The phrase ‘‘including any major source of fugitive emissions’’ in the current rule modifies only the 25 ton per year threshold. This phrase could also imply that fugitives are included in the potential to emit determination only if the source emits major amounts of fugitive emissions. The EPA expects, however, that ADEQ will implement this provision consistent with the EPA policy that all fugitive emissions of hazardous air pollutants at a source must be considered in determining whether the source is major for purposes of section 112 of the CAA.

(2) Revise AAC R18 to clarify that, when an existing source obtains a significant permit revision to revise its permit from a Class II permit to a Class I permit, the entire permit, and not just the portion being revised, must be issued in accordance with part 70 permit application, content, and issuance requirements, including requirements for public, affected state, and EPA review.

(3) Section 70.6(a)(8) requires that title V permits contain a provision that ‘‘no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.’’ AAC R18–2–306(A)(10) includes this exact provision but also includes a sentence that negates this provision. ADEQ must either delete the negating sentence:

> ‘‘This provision shall not apply to emissions trading between sources as provided in the applicable implementation plan.’’

or revise this sentence as follows:

> ‘‘This provision shall not apply to emissions trading between sources [as provided] if such trading is prohibited in the applicable implementation plan.’’

(§ 70.6(a)(8))

(4) Section 70.4(b)(12) provides that sources are allowed to make changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit. Specifically, section 70.4(b)(12)(iii) provides that if a permit applicant requests it, the permitting authority shall issue a permit allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap, established in the permit independent of otherwise applicable requirements. AAC R18–2–306(A)(14) provides for such permit conditions but does not restrict the allowable changes to those that are not modifications under title I of the Act and those that do not exceed the emissions allowable under the permit. ADEQ must revise AAC R18–2–306(A)(14) to clarify that changes made under this provision may not be modifications under any provision of title I of the Act and may not exceed emissions allowable under the permit.

(5) Revise AAC R18–2–310 to be consistent with the section 70.6(g) provision for an emergency affirmative defense. Part 70 programs may only provide for an affirmative defense to actions brought for noncompliance with technology-based emission limits when such noncompliance is due to an emergency situation.

(6) Revise AAC R18–2–331(A)(1) to provide under the definition of ‘‘material permit condition’’ that ‘‘the condition is in a permit or permit revision issued by the Director or the Control Officer after the effective date of this section.’’

b. Maricopa County Environmental Services Department. Maricopa must make the following changes, or changes that have the same effect, to receive full approval:

(1) Delete the following language from MAPC Regulation I, Rule 100, section 224:

> ‘‘Properties shall not be considered contiguous if they are connected only by property upon which is located equipment utilized solely in transmission of electrical energy.’’

This language, which is part of the definition of a stationary source, is not consistent with the stationary source definition in section 70.2.

(2) Revise MAPC Regulation I, Rule 100, section 251.2 to clarify that fugitive emissions of hazardous air pollutants must be considered in determining whether the source is major for purposes of both the 10 ton per year and 25 ton per year major source thresholds. The phrase ‘‘including any major source of fugitive emissions’’ in the submitted § 251.2 modifies only the 25 ton per year threshold. This phrase could also imply that fugitives are included in the potential to emit determination only if

the source emits major amounts of fugitive emissions. The EPA expects, however, that Maricopa will implement this provision consistent with the EPA policy that all fugitive emissions of hazardous air pollutants at a source must be considered in determining whether the source is major for purposes of section 112 of the CAA.

(3) Revise MAPC Regulation I, Rule 100, section 505 to clarify that for Title V sources, records of all required monitoring data and support information must be retained for a period of five years, as provided in Regulation II, Rule 210, section 302.1(d)(2). (§ 70.6(a)(3)(ii)(B))

(4) Revise MAPC Regulation I, Rule 100, section 506 to clarify that for Title V sources, all permits, including all elements of permit content specified in Rule 210, section 302, shall be available to the public, as provided in Regulation II, Rule 200, section 411.1. (§ 70.4(b)(3)(viii))

(5) Revise MAPC Regulation II, Rule 200, section 312.2 to define when sources become ''subject to the requirements of Title V.'' A source becomes subject to the requirements of title V from the effective date of EPA's approval of the County's program when the source meets the applicability requirements as provided in section 302 of Rule 200. In addition, revise section 312.5 to require that existing sources that do not hold a valid installation or operating permit must submit an application within 12 months of becoming subject to the requirements of title V.

(6) Provide a demonstration that the activities listed in MAPC Regulation II, Rule 200, Section 303.3(c) are insignificant. Remove from the list any activities that are subject to a unit-specific applicable requirement. Another option is to add emissions cut-offs or size limitations to ensure that the listed activities are below any applicability thresholds for applicable requirements. (§ 70.5(c), § 70.4(b)(2))

(7) For the reason explained above in II.C.1.a.(3), revise MAPC Regulation II, Rule 210, Section 302.1(j) by either deleting the following sentence:

> ''This provision shall not apply to emissions trading between sources as provided in the applicable implementation plan.''

or by revising this sentence as follows:

> ''This provision shall not apply to emissions trading between sources [as provided] if such trading is prohibited in the applicable implementation plan.''

(§ 70.6(a)(8))

(8) For the reason explained above in II.C.1.a.(4), revise MAPC Regulation II, Rule 210, Section 302.1(n) to clarify that changes made under this provision may not be modifications under any provision of title I of the Act and may not exceed emissions allowable under the permit. In addition, revise this provision to require the notice required by sections 403.4 and 403.5 to also describe how the increases and decreases in emissions will comply with the terms and conditions of the permit. (§ 70.4(b)(12))

(9) Delete the provision of MAPC Regulation II, Rule 210, section 404.1(e) that provides for equipment removal that does not result in an increase in emissions to be processed as an administrative permit amendment. Equipment removal, even if it does not result in an increase in emissions, is not similar to the types of changes that EPA has included in the part 70 definition of ''administrative permit amendment.'' In some cases removal of equipment, such as monitoring equipment, will require processing as a significant permit revision. In other situations removal of equipment may qualify for processing as a minor permit revision or possibly for treatment under the operational flexibility provisions. (§ 70.7(d), § 70.7(e)(4))

(10) Delete the following language from the criteria for minor permit revisions in MAPC Regulation I, Rule 210, section 405.1(c):

> '' * * * other than a determination of RACT pursuant to Rule 241, Section 302 of these rules, * * *''

This language is included in the rule as an exception to the prohibition against allowing case-by-case determinations to be processed as minor permit revisions. The definition of RACT in section 272 of Rule 100 states that ''RACT for a particular facility, other than a facility subject to Regulation III, is determined on a case-by-case basis * * *'' Rule 241 is not in Regulation III, so RACT determinations made pursuant to this rule are done so on a case-by-case basis. Excepting RACT determinations from the prohibition against processing case-by-case determinations through the minor permit revision process violates the requirement of section 70.7(e)(2)(i)(A)(3).

(11) Revise Regulation II, Rule 210, Section 408 to include a provision for giving public notice ''by other means if necessary to assure adequate notice to the affected public.'' (§ 70.7(h)(1))

c. *Pima County Department of Environmental Quality.* Pima must make the following changes, or changes that have the same effect, to receive full approval:

(1) Revise the definition of major source in PCC § 17.04.340(133)(b)(i) to clarify that fugitive emissions of hazardous air pollutants must be considered in determining whether the source is major for purposes of both the 10 ton per year and 25 ton per year major source thresholds. The current definition appears to require inclusion of fugitive emissions only when determining applicability according to the 10 ton per year major source threshold.

(2) Revise PCC § 17.12.150(B) and § 17.12.150(G)(1) to clarify when a source becomes subject to obtaining title V permits. A source becomes subject to obtaining a title V permit from the effective date of EPA's approval of the County's program when the source meets the applicability requirements as provided in section 17.12.140(B)(1).

(3) Revise PCC § 17.12.160(E)(7) to provide that only emissions units that are not subject to unit-specific applicable requirements may qualify for treatment as insignificant emissions units.

(4) For the same reason discussed above in II.C.1.a.(3), revise PCC § 17.12.180(A)(10) by either deleting the following sentence:

> ''This provision shall not apply to emissions trading between sources as provided in the applicable implementation plan.''

or by revising this sentence as follows:

> ''This provision shall not apply to emissions trading between sources [as provided] if such trading is prohibited in the applicable implementation plan.''

(§ 70.6(a)(8))

(5) For the same reason discussed above in II.C.1.a.(4), revise PCC § 17.12.180(A)(14) to clarify that changes made under this provision may not be modifications under any provision of title I of the Act and may not exceed emissions allowable under the permit. (§ 70.4(b)(12))

(6) Revise PCC § 17.12.340 to include a provision for giving public notice ''by other means if necessary to assure adequate notice to the affected public.'' (§ 70.7(h)(1))

d. Pinal County Air Quality Control District. Pinal must make the following changes, or changes that have the same effect, to receive full approval:

(1) Revise PCR § 1–3–140(79)(b)(i) to clarify that fugitive emissions of hazardous air pollutants must be considered in determining whether the source is major for purposes of both the 10 ton per year and 25 ton per year HAP major source thresholds. The phrase ''including any fugitive emissions of any such pollutants'' in the current rule

modifies only the 25 ton per year threshold. The EPA expects, however, that Pinal will implement this provision consistent with the EPA policy that all fugitive emissions of hazardous air pollutants at a source must be considered in determining whether the source is major for purposes of section 112 of the CAA.

(2) Revise PCR § 1–3–140(79)(c) to delete sections 79(c)(ii), (iii), and (iv) and to add the following to the list of sources that must include fugitive emissions when determining major source status as defined in section 302(j) of the Act:

''The source belongs to a category regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category.''

(3) Revise PCR § 3–1–040(C)(1) to require that the motor vehicles, agricultural vehicles, and fuel burning equipment that are exempt from permitting shall not be exempt if they are subject to any applicable requirements. (70.5(c))

(4) Revise PCR § 3–1–045(F)(1) to require sources requiring Class A permits to submit a permit application no later than 12 months after the date the Administrator approves the District program. Revise PCR § 3–1–050(C) to include an application deadline for existing sources that become subject to obtaining a Class A permit after the initial phase-in of the program. One example is a synthetic minor source that is not initially required to obtain a Class A permit but later removes federally enforceable limits on its potential emissions such that it becomes a major source, but is not required to go through the preconstruction review process. This application deadline must be 12 months from when the source becomes subject to the program (meets Class A permit applicability criteria). (§ 70.5(a)(1)(i))

(5) For the reason discussed above in II.C.1.a.(3), revise PCR § 3–1–081(A)(10) by either deleting the following sentence:

''This provision shall not apply to emissions trading between sources as provided in the applicable implementation plan.''

or by revising this sentence as follows:

''This provision shall not apply to emissions trading between sources [as provided] if such trading is prohibited in the applicable implementation plan.''

(§ 70.6(a)(8))

(6) For the reason discussed above in II.C.1.a.(4), revise PCR § 3–1–081(A)(14) to clarify that changes made under this provision may not be modifications under any provision of title I of the Act and may not exceed emissions allowable under the permit. In addition, revise this provision to require that the permit terms and conditions shall provide for notice that conforms to section 3–2–180(D) and (E) and that describes how the increases and decreases in emissions will comply with the terms and conditions of the permit. (§ 70.4(b)(12))

(7) Revise PCR § 3–4–420 to provide that a conditional order that allows a source to vary from the requirement to obtain a Class A permit may not be granted to any source that meets the Class A permit applicability criteria pursuant to PCR § 3–1–040.

The scope of the part 70 programs approved in this document applies to all part 70 sources (as defined in the approved program) within the State of Arizona, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

2. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that state and county programs contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR section 63.91 of ADEQ's, Maricopa's, Pima's, and Pinal's programs for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated and that apply to sources covered by the part 70 program.

As discussed in the NPR, because Pima's approved program requires all sources (including nonmajor sources) subject to a requirement under section 112 of the Act to obtain a part 70 permit, the proposed approval of Pima's program for delegation extends to section 112 standards as applicable to all sources. ADEQ, Maricopa, and Pinal will not issue part 70 permits to nonmajor sources subject to a section 112 standard (unless such sources are designated by EPA to obtain a permit) but these agencies submitted addenda to their title V programs in which they specifically requested approval under section 112(l) of a program for delegation of unchanged section 112 standards applicable to non-part 70 sources. (See discussion in II.B.2 of the NPR and in II.B.13 of this document.) Therefore, today's proposed approval under section 112(l) of ADEQ's, Maricopa's, and Pinal's program for delegation extends to non-part 70 sources as well as part 70 sources.

III. Direct Final Action on Revised Pinal County Program

A. Analysis of County Submission

ADEQ, on behalf of Pinal County, submitted a revised title V permit program for Pinal County on August 15, 1995. The revised program submittal consisted of a revised County code of regulations adopted by the Pinal County Board of Supervisors on February 22, 1995 and a supplemental County Attorney's legal Opinion. The other program elements submitted on November 15, 1993 and subsequent dates as noted in the proposed interim approval are considered part of this revised program except where the revised regulation or supplemental County Attorney's opinion change or replace those program elements. In some cases, the County revised its regulations to correct deficiencies or address other issues identified by EPA in its July 13, 1995 proposed interim approval. The EPA has discussed such changes in II.B above and taken final action on those program revisions in II.C above. The discussion that follows and the direct final interim approval action being taken today apply to changes to the regulation that are relevant to implementation of the title V operating permits program that were not addressed in the final interim approval action in section II of this document.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing interim approval of the specified portions of the operating permit program submitted by Pinal should adverse or critical comments be filed.

If EPA receives adverse or critical comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on December 30, 1996.

Today's direct final action promulgates approval of specific changes to the Pinal County Code of Regulations adopted on February 22, 1995 that are relevant to implementation and enforcement of the Pinal County title V operating permits program. The specific provisions of Pinal's title V regulations adopted or revised on February 22, 1995 that are addressed by this direct final action are Sections 1–3–140(1a), 140(16a), 140(44), 140(56), 140(58e), 140(59), 140(66), 140(86), 140(89), and 140(146) of Article 3 of Chapter 1; Sections 3–1–042, 045(C), 050(C)(4), 050(G), 080(A), 081(A)(5)(b), 081(A)(6), 100(A), and 109 of Article 1 of Chapter 3; and Articles 5 and 7 of Chapter 3 of the Pinal County Code of Regulations (PCR). These regulations substantially meet the requirements of 40 CFR part 70, §§ 70.2 and 70.3 for applicability; sections 70.4, 70.5, and 70.6 for permit content, including operational flexibility; § 70.7 for public participation and minor permit modifications; § 70.5 for criteria that define insignificant activities; § 70.5 for complete application forms; and § 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are deficiencies in the program that are outlined under section III.C. below as interim approval issues and further described in the Technical Support Document.

The analysis contained in this document focuses on the specific elements of the revised Pinal title V operating permits program that must be corrected to meet the minimum requirements of part 70. The full program submittal; the Technical Support Document (TSD), which contains a detailed analysis of the submittal; and other relevant materials are available for inspection as part of the public docket (AZ–95–1–OPS). The docket may be viewed during regular business hours at the address listed above.

1. General Permits.

Section 70.6(d) provides that permitting authorities may issue a general permit covering numerous similar sources. General permits must meet all requirements applicable to other part 70 permits and must specify the criteria that sources must meet to be covered under the general permit. Qualifying sources may then apply for coverage under the terms and conditions of the permit. Article 5 of Chapter 3 of the Pinal County regulations contain the provisions pertaining to general permits. Article 5 as submitted on November 15, 1993 provided that the Control Officer of Pinal County could issue a general permit for a class of facilities that had similar operations, similar emissions, and similar applicable requirements. Article 5 as amended by Pinal on February 22, 1995 and submitted to EPA on August 15, 1995 repeals the authority of the Control Officer to issue a general permit. Instead, the regulations provide for the District to administer general permits that are issued by ADEQ. Administration of general permits includes receiving applications from sources in the District that seek authorization to operate under a general permit; issuing, denying, or revoking such authorizations to operate under the permit; and enforcing the terms and conditions of the general permit.

PCR § 3–5–490 contains the requirements for applying for coverage under a general permit. There are several deficiencies in this portion of the rule that must be corrected before Pinal can receive full approval of its revised program. PCR § 3–5–490(C) provides that an existing source that files a timely and complete application seeking coverage under a general permit either as a renewal of authorization under the general permit or as an alternative to renewing an individual part 70 permit may operate within the limitations set forth in its application until the District takes action on the application. This is inconsistent with the requirements of part 70 and with other provisions of Pinal's rules. Section 70.4(b)(10) requires that if a timely and complete application for a permit renewal is submitted but the state has failed to issue or deny the renewal permit before the end of the term of the previous permit then either: (1) The permit shall not expire until the renewal permit has been issued or denied; or (2) All terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied. PCR § 3–1–089 requires that any source relying on a timely and complete application as authority to operate after expiration of the permit shall be legally bound to adhere to and conform to the terms of the expired permit. This provision is consistent with part 70. Pinal must revise PCR § 3–5–490(C) to be consistent with § 70.4(b)(10) and EPA recommends that it be revised to be consistent with PCR § 3–1–089.

Section 490(C) also provides that if an existing source seeking coverage under a general permit as an alternative to renewing an individual permit is denied authorization to do so, that the source must apply for an individual permit within 180 days of being notified to do so but may continue to operate within the limitations of the general permit under which coverage was denied during that 180 day period. This also conflicts with § 70.4(b)(10). Pinal must revise the rule to require that the source must continue to comply with the terms and conditions of its individual source permit. In addition, Pinal must revise section 490(C) to clarify, consistent with § 70.7(d) and § 70.4(b)(10), that notwithstanding the 180 day permit application deadline set by the District in its notification to the source, the source that was denied coverage under the general permit may not operate after the date that its individual permit expires unless it has submitted a timely and complete application to renew that individual permit in accordance with PCR § 3–1–050(C)(2).

PCR § 3–5–550 includes provisions for the Control Officer to revoke a source's authorization to operate under a general permit and require that it obtain an individual source permit. PCR § 3–5–550(C) provides that a source previously authorized to operate under a general permit may operate under the terms of the general permit until the earlier of the date of expiration of the general permit, the date it submits a complete application for an individual permit, or 180 days after receipt of the notice of termination of any general permit. This provision also requires the source to comply with the provisions of PCR § 3–1–089, which requires that any source relying on a timely and complete application as authority to operate after a permit expires must comply with the terms of the expired permit. PCR § 3–5–550(C) therefore contradicts itself. Pinal must revise the rule to clarify that if the Control Officer revokes the source's authorization to operate under a general permit then, if the source submits a timely and complete application for an individual source permit as required by the Control Officer, it may continue to operate under the terms of the general permit until the District issues or denies the individual source permit.

B. Direct Final Interim Approval and Implications

The EPA is promulgating direct final interim approval of the following provisions of the revised operating permits program submitted by the Arizona Department of Environmental Quality, on behalf of the Pinal County Air Quality Control District, on August 15, 1995: Sections 1–3–140(1a), 140(16a), 140(44), 140(56), 140(58e), 140(59), 140(66), 140(86), 140(89), and 140(146) of Article 3 of Chapter 1; Sections 3–1–042, 045(C), 050(C)(4), 050(G), 080(A), 081(A)(5)(b), 081(A)(6), 100(A), and 109 of Article 1 of Chapter 3; and Articles 5 and 7 of Chapter 3 of the Pinal County Code of Regulations (PCR).

This direct final interim approval does not apply to the County operating permit program for non-part 70 sources or to the County preconstruction review program. This interim approval applies to the regulatory provisions cited above only as they apply to Class A operating permits.

Areas in which Pinal's program is deficient and requires corrective action prior to full approval are as follows. Pinal must correct these deficiencies by November 30, 1998. This is the expiration date of the interim approval granted by EPA to the original program submitted by Pinal on November 15, 1993 as discussed above in II.C.1. The timeframes and conditions of this direct final interim approval action and for EPA oversight and sanctions are the same as discussed above in II.C.1.

Pinal must make the following changes, or changes that have the same effect, to receive full approval:

(1) Revise PCR § 3–5–490(C) to provide that when an existing source that files a timely and complete application seeking coverage under a general permit either as a renewal of authorization under the general permit or as an alternative to renewing an individual part 70 permit, that the source must continue to comply with the terms and conditions of the permit under which it is operating, even if that permit expires, until the District issues or denies the authorization to operate under the general permit.

(2) Revise PCR § 3–5–490(C) to require that if an existing source seeking coverage under a general permit as an alternative to renewing an individual permit is denied authorization to do so, that the source must continue to comply with the terms and conditions of its individual source permit. In addition, Pinal must revise § 3–5–490(C) to clarify that notwithstanding the 180 day permit application deadline set by the District in its notification to the source, the source that was denied coverage under the general permit may not operate after the date that its individual permit expires unless it has submitted a timely and complete application to renew that individual permit in accordance with PCR § 3–1–050(C)(2).

(3) Revise PCR § 3–5–550(C) to clarify that if the Control Officer revokes the source's authorization to operate under a general permit then, if the source submits a timely and complete application for an individual source permit as required by the Control Officer, it may continue to operate under the terms of the general permit until the District issues or denies the individual source permit.

IV. Administrative Requirements

A. Docket

Copies of the State and county submittals and other information relied upon for the final interim approval and direct final interim approval, including public comments on the proposal from 15 different parties, are contained in docket number AZ–95–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval and direct final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 18, 1996.

John Wise,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Arizona in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Arizona

(a) *Arizona Department of Environmental Quality:* submitted on November 15, 1993 and amended on March 14, 1994; May 17, 1994; March 20, 1995; May 4, 1995; July 22, 1996; and August 12, 1996; interim approval effective on November 29, 1996; interim approval expires November 30, 1998.

(b) *Maricopa County Environmental Services Department:* submitted on November 15, 1993 and amended on

December 15, 1993; January 13, 1994; March 9, 1994; and March 21, 1995; July 22, 1996; and August 12, 1996; interim approval effective on November 29, 1996; interim approval expires November 30, 1998.

(c) *Pima County Department of Environmental Quality:* submitted on November 15, 1993 and amended on December 15, 1993; January 27, 1994; April 6, 1994; and April 8, 1994; August 14, 1995; July 22, 1996; and August 12, 1996; interim approval effective on November 29, 1996; interim approval expires November 30, 1998.

(d) *Pinal County Air Quality Control District:*

(1) submitted on November 15, 1993 and amended on August 16, 1994; August 15, 1995; July 22, 1996; and August 12, 1996; interim approval effective on November 29, 1996; interim approval expires November 30, 1998.

(2) revisions submitted on August 15, 1995; interim approval effective on December 30, 1996; interim approval expires November 30, 1998.

* * * * *

[FR Doc. 96–27836 Filed 10–29–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 97

[ET Docket No. 94–32; FCC 96–390]

Allocation of Spectrum Below 5 GHz Transferred From Federal Government Use

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission declines to adopt additional service rules or coordination procedures for the amateur service and Data-PCS devices or for the amateur service. The Commission also prohibits airborne use of all unlicensed devices in the 2390–2400 MHz band in order to protect space research conducted at the National Astronomy and Ionospheric Center Observatory (NAIC) at Arecibo, Puerto Rico. In addition, the Commission declines to combine the 2390–2400 MHz and 2400–2483.5 MHz bands for use by both Data-PCS and other unlicensed devices. It reaffirms that as long as the unlicensed device satisfies the technical standards of the band in which it is operating, the device would be permitted to transmit in either band. This action permits immediate use of the 2390–2400 MHz and 2402–2417 MHz bands by the amateur service, Data-PCS devices, and other unlicensed devices under existing rules. Finally the new and enhanced services and uses permitted by this action will create new jobs, foster economic growth, and improve access to communications by industry and the American public.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Sean White (202) 418–2453 and Tom Derenge (202) 418–2451, Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Report and Order*, ET Docket 94–32, FCC 96–390, adopted September 20, 1996, and released October 18, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of the Report and Order

1. By this action, the Commission addresses issues raised in the *First Report and Order and Second Notice of Proposed Rule Making (First R&O and Second NPRM),* 60 FR 13102, March 10, 1995, 10 FCC Rcd 4769 (1995) in this proceeding regarding sharing of the 2390–2400 MHz and 2402–2417 MHz bands by the Amateur Radio Service and unlicensed devices. On February 7, 1995, the Commission adopted the *First R&O and Second NPRM.* In that action, the Commission made the 2390–2400 MHz band available for use by unlicensed Data Personal Communications Services (Data-PCS) devices on a non-interference basis, provided for continued use of the 2402–2417 MHz band by other, non-Data-PCS, Part 15 devices, upgraded the allocation for both of these bands for use by the Amateur Radio Service from secondary to primary, and allocated the 4660–4685 MHz band for use by the Fixed and Mobile Services. Additionally, we extended the existing rules governing Data-PCS at 1910–1920 MHz to the 2390–2400 MHz band and decided that both the amateur service and non-Data-PCS Part 15 operations at 2402–2417 MHz would continue to be governed in accordance with currently applicable technical and operational rules.

2. In the *First R&O and Second NPRM*, we also requested comment on any rule changes that might be necessary for the amateur service and non-Data-PCS Part 15 devices to share the spectrum more efficiently. In addition, we stated that Data-PCS and amateur use of 2390–2400 MHz would generally be compatible and that it was unnecessary to propose any formal standards for sharing between these services in this band. However, we requested comment on whether formal sharing requirements would be needed or whether formal coordination procedures should be developed for amateur/Data-PCS use.

3. We also proposed to prohibit airborne use of all unlicensed devices operating at 2390–2400 MHz in order to protect space research operations at 2380 MHz in the vicinity of the National Astronomy and Ionospheric Center Observatory (NAIC) at Arecibo, Puerto Rico. Noting that we were not proposing similarly to prohibit the terrestrial use of unlicensed devices in the vicinity of the NAIC, we sought comment on whether the proposed ban on airborne use would provide adequate protection to space research operations and, if not, what additional steps we should take to provide greater protection. In addition, we sought comment on whether the 2390–2400 MHz band and the superjacent 2400–2483.5 MHz band, where Part 15 operations are currently authorized, should be combined for use as a single, large Part 15 band.

4. In addition to commenting on these proposals, several commenters requested that we allocate the 2390–2400 MHz and 2402–2417 MHz bands to unlicensed devices on a primary basis. Currently, unlicensed devices have no allocation status, but are permitted to operate on a non-interference basis to other users of the bands.

5. In this *Fourth Report and Order (Fourth R&O)* the Commission declines to adopt additional service rules or coordination procedures for the amateur service and Data-PCS devices or for the amateur service and other Part 15 devices. We find that the existing technical rules governing use of these bands are adequate and that no additional rules are needed. We also prohibit airborne use of all unlicensed devices in the 2390–2400 MHz band in order to protect space research conducted at the NAIC. In addition, we decline to combine the 2390–2400 MHz and 2400–2483.5 MHz bands for use by both Data-PCS and other Part 15 devices. Instead, the item reaffirms that as long as the unlicensed device satisfies the technical standards of the band in which it is operating, the device would be permitted to transmit in either band. Finally, the Commission concludes that this is not the appropriate proceeding to address requests for a primary allocation for unlicensed devices in the 2390–2400 MHz and 2402–2417 MHz bands.

Final Regulatory Flexibility Analysis

6. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Report and Order and Second Notice of Proposed Rule Making, (First R&O and Second NPRM),* ET Docket No. 94–32.[1] The Commission sought written public comments on proposals in the *First R&O and Second NPRM,* including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Fourth Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).[2]

7. Need for and Objectives of the Rule: This action is taken in response to the Reconciliation Act,[3] which required the Secretary of Commerce to identify 200 megahertz of spectrum, currently allocated for use by Federal Government agencies, that could be transferred for private sector use, and in response to the ensuing Preliminary Spectrum Reallocation Report published by the Department of Commerce,[4] which identified such spectrum. The *First R&O and Second NPRM* in this proceeding allocated the 2390–2400 MHz band to the Amateur Radio Service and Data-PCS, the 2402–2417 MHz band to the Amateur Radio Service, and the 4660–4685 MHz band to the Fixed and Mobile Services. It also inquired as to whether we should prohibit aeronautical use of Data-PCS or other unlicensed devices to protect space research operations at the National Astronomy and Ionospheric Center (NAIC) at Arecibo, Puerto Rico, as well as whether we should allow Data-PCS devices to operate in the 2400–2483.5 MHz band where other unlicensed devices operate, and vice versa. The allocation of Data-PCS spectrum is intended to provide enhanced communication service to the American public, while also creating new jobs, fostering economic growth, and increasing access to communications for industry and the public. The upgrade to primary status of the amateur allocation in this spectrum will encourage amateur operators to use this spectrum. The Commission's adoption of rules to prohibit the use of Data-PCS devices in the 2390–2400 MHz band while airborne, is intended to protect space research operations at the NAIC.

8. Summary of Significant Issues Raised by Public Comments in Response to the IRFA: No comments directly responded to the IRFA. In general comments on the *First R&O and Second NPRM,* however, some commenters raised an issue that might affect small entities. Some commenters argued that merging the 2390–2400 MHz band with the superjacent 2400–2483.5 MHz band into a single, large band for non-Data-PCS devices would make the spectrum more useful to manufacturers and users of unlicensed spread spectrum equipment, some of whom may be small entities. Because Data-PCS devices are asynchronous devices and follow a special spectrum sharing etiquette, while other Part 15 unlicensed devices are typically isochronous and do not adhere to a spectrum sharing etiquette, the Commission determined that combining the bands presented a significant danger of delaying or hampering the growth of Data-PCS through interference from other unlicensed devices. Manufacturers and users of Data-PCS devices may also be small entities, and the Commission declined to combine the bands because of the potential for mutual harmful interference between Data-PCS devices and other unlicensed devices.

9. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply: The rule adopted in this *Fourth Report and Order* will apply to any small entity using Data-PCS devices while airborne in the continental United States. Because Data-PCS is as yet undeveloped, no meaningful estimate of the number or description of such small entities is possible. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request an estimate of the number of small businesses that may be affected.

However, as Data-PCS service evolves, and until the Commission establishes a pertinent definition of small entities, the applicable definition will be under the Small Business Association (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[5] According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities.[6]

10. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements: The rule adopted in this *Fourth Report and Order* imposes no reporting or recordkeeping requirements. The rule also requires no affirmative compliance action by any entity to which it applies. Rather, the rule operates as a prohibition on the use of Data-PCS devices in the 2390–2400 MHz band while airborne in the continental United States. We do not predict that any compliance costs, administrative or otherwise, will be imposed on entities subject to this rule.

11. Significant Alternatives and Steps Taken to Minimize the Economic Impact on a Substantial Number of Small Entities Consistent with the Stated Objectives: The Commission believes that this allocation of Data-PCS spectrum will facilitate the creation of new jobs and economic growth. At the suggestion of commenters, the Commission considered and rejected a complete ban on all use of unlicensed devices in the vicinity of the NAIC. The Commission rejected this alternative as excessively burdensome to small entities using Data-PCS, while of little benefit in protecting space research operations at the NAIC. The Commission also considered and agreed with a recommendation by Apple that manufacturers should not be held responsible for designing Data-PCS devices to cease operations while traveling in aircraft.[7] We believe that this would place an unnecessary burden on the manufacturer and we believe that it will be the responsibility of the user to control when and where the device is used. Data-PCS is a nascent service, and it is not possible to determine the impact this action will have on small businesses, because we have no data on the number of small businesses likely to use Data-PCS.

12. Report to Congress: The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Fourth Report and Order,* in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

1 See 10 FCC Rcd 4769 (1995).

2 Subtitle II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), codified at 5 U.S.C. 601 et seq.

3 Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, 107 Stat 312 (enacted August 10, 1993).

4 See Spectrum Reallocation Final Report, U.S. Department of Commerce, NTIA, Special Publication 95–32, February 1995.

5 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

6 U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms: 1992, SIC Code 4899 (issued May 1995).

7 See, decision at para. 22.

List of Subjects

47 CFR Part 15

Communications equipment, Radio.

47 CFR Part 97

Communications equipment, Radio.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Rule Changes

Parts 15 and 97 of Title 47 of the Code of Federal Regulation are amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

2. Section 15.321 is amended by adding paragraph (g) to read as follows:

§ 15.321 Specific requirements for asynchronous devices operating in the 1910–1920 MHz and 2390–2400 MHz bands.

* * * * *

(g) Operation of devices in the 2390–2400 MHz band from aircraft while airborne is prohibited, in order to protect space research operations at the National Astronomy and Ionospheric Center at Arecibo, Puerto Rico.

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.303(j)(2) is revised to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(j) * * *

(2) In the United States, the 2300–2310 MHz segment is allocated to the amateur service on a co-secondary basis with the Government fixed and mobile services. In this segment, the fixed and mobile services must not cause harmful interference to the amateur service. The 2390–2400 MHz and 2402–2417 MHz segments are allocated to the amateur service on a primary basis. No amateur station transmitting in the 2400–2450 MHz segment is protected from interference due to the operation of industrial, scientific, and medical devices on 2450 MHz.

* * * * *

[FR Doc. 96–27818 Filed 10–29–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 95–28; RM–8593, RM–8696]

Radio Broadcasting Services; Stamping Ground and Nicholasville, Kentucky

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Scott County Broadcasting, Inc., substitutes Channel 241A for Channel 256A at Stamping Ground, Kentucky, and modifies Station WKYI(FM)'s license accordingly (RM–8593). *See* 60 FR 12725, March 8, 1995. As requested, we also dismiss the counterproposal filed by Mortenson Broadcasting Company of Kentucky, L.L.C., requesting the allotment of Channel 240A at Nicholasville, Kentucky, as the community's second local FM transmission service (RM–8696). Channel 241A can be allotted to Stamping Ground in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.0 kilometers (7.5 miles) east to avoid short-spacings to the licensed sites of Station WRSL–FM, Channel 242C3, Stanford, Kentucky, and Station WKID(FM), Channel 240A, Vevay, Indiana. The coordinates for Channel 241A at Stamping Ground are North Latitude 38–17–43 and West Longitude 84–33–10. With this action, this proceeding is terminated.

DATES: Effective December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 95–28, adopted October 11, 1996, and released October 18, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 256A and adding Channel 241A at Stamping Ground.

Federal Communications Commission
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–27687 Filed 10–29–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 102196B]

Atlantic Tuna Fisheries; Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishery reopening.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (ABT) General category quota, as adjusted, has not been reached. Therefore, NMFS reopens the General category fishery for large medium and giant ABT for all areas for one additional day. Closure of this one day fishery will be strictly enforced. Subsequent to this closure, the General category fishery for large medium and giant ABT for areas inside the New York Bight will remain open until the set-aside quota is reached. This action is being taken to extend scientific data collection on certain size classes of ABT while preventing overharvest of the adjusted subquotas for the affected fishing categories.

EFFECTIVE DATE: The General category fishery for large medium and giant ABT will open for all areas beginning Sunday, October 27, at 1 a.m. local time and close on Sunday, October 27, at 11:30 p.m. local time. The General category fishery for large medium and giant ABT for areas inside the New York Bight will remain open until further notice.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a Federal Register announcement to close the applicable fishery.

General Category Reopening

Implementing regulations for the Atlantic tuna fisheries at § 285.22 provide for a quota of 541 mt of large medium and giant ABT to be harvested from the regulatory area by vessels fishing under the General category quota during calendar year 1996. The General category ABT quota is further subdivided into monthly quotas to provide for broad temporal and geographic distribution of scientific data collection and fishing opportunities.

NMFS previously adjusted the General category October subquota to 60 mt for all areas outside the New York Bight and announced a closure date of October 2, 1996 (61 FR 50765, September 27, 1996). NMFS subsequently adjusted the General category October subquota by transferring 30 mt from the Incidental longline category under the authority of implementing regulations at 50 CFR 285.22(f) (61 FR 53677, October 15, 1996). Thus, the October General category quota was adjusted to 90 mt, with an additional 10 mt reserved for the New York Bight, and the General category fishery was reopened for areas outside the New York Bight for one day on October 11, 1996. The full 90 mt October General category quota was not taken as of the closure on October 11, 1996, so NMFS reopened the General category fishery for one day on October 21, 1996 (61 FR 55119, October 24, 1996). Due to poor weather conditions, fishing effort was minimal and NMFS has determined that the full 90 mt October General category quota still has not been taken as of the closure on October 21, 1996. Therefore, NMFS reopens the General category fishery for large medium and giant ABT for all areas for one day on October 27, 1996. Closure of this one day fishery will be strictly enforced and remaining quota, if any, will be held in reserve for the General category in 1997 or, if necessary, other fishing categories in 1996.

The New York Bight set-aside is not affected by this action and the General category fishery for large medium and giant ABT for areas inside the New York Bight will remain open until the set-aside quota is reached. However, during this one day opening, on October 27, 1996, large medium and giant ABT harvested and landed in the New York Bight area will not be counted against the New York Bight set-aside quota, but will be counted against the 90 mt quota for the October General category fishery.

Classification

This action is taken under 50 CFR 285.20(b), 50 CFR 285.22, and 50 CFR 285.24 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: October 24, 1996.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–27784 Filed 10–25–96; 12:34 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 211
Wednesday, October 30, 1996

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Raisin Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of raisins. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and to include the current Raisin Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business November 29, 1996 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through December 30, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m. to 4:45 p.m., est Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: John Meyer, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 30, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0003 through September 30, 1998.

The title of this information collection is ‘‘Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Raisin Crop Insurance Provisions.’’ Information previously collected includes a crop insurance application and a raisin tonnage report. This rule also requires the insured to file a location and unit report to indicate an insured’s acreage prior to the time insurance attaches. Submitting this report before insurance attaches will protect the integrity of the program by reducing the opportunity to inflate losses after damage occurs. Information collected from the location and unit reports, tonnage reports, and application is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of raisins that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,669,970 hours.

FCIC is requesting comments for the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Bonnie Hart, USDA, FSA, Advisory and Corporate Operations Staff, Regulatory Review Group, P.O. Box 2415, STOP 0572, Washington, D.C. 20013–2415, telephone (202) 690–2857. Copies of the information collection may be obtained from Bonnie Hart at the above address.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities or treat small and large entities disproportionately. Under the current regulations, a producer is required to complete an application and tonnage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. These requirements apply to all insureds regardless of size, and this regulation does not alter these requirements. Although this rule requires each insured to file an additional report (a location and unit report), the required information is readily available. Further, the benefit of protecting program integrity outweighs any impact on the insured or insurance provider. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR § 457.124, Raisin Crop Insurance Provisions. The new provisions will be effective for the 1997 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring raisins found at 7 CFR § 401.142 Raisin Endorsement. By separate rule, FCIC will revise 7 CFR § 401.142 to restrict its effect through the 1996 crop year and later remove that section.

This rule makes minor editorial and format changes to improve the Raisin Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring raisins as follows:

1. Section 1—Add the definition of ''days,'' ''RAC,'' and ''written agreement'' for clarification. A definition of ''location and unit report'' is also added to describe the form to be used to report acreage information prior to the time insurance attaches. Delete the definition of ''USDA Inspection'' because the term is no longer used.

2. Section 3(c)(2)—Provisions allowing the use of tray weights to establish the number of insured tons when production is not removed from the vineyard have been deleted. Experience has proven that tray weights and counts may not be accurate indicators of production amounts. Instead, when appraisals are required, the amount of raisin tonnage lost will be determined in sample areas. These amounts will then be used to determine the total amount lost in the vineyard.

3. Section 3(c)(3)—Add a provision indicating that raisins used for a purpose other than dry edible fruit will be considered to contain 24.3 percent moisture if they contain greater than that amount at the time of delivery. Currently, available measurement techniques can not measure moisture amounts greater than this.

4. Section 6—Add provisions that require the insured to report raisin acreage prior to the time insurance attaches. This will prevent adverse selection that is possible when insureds do not report any information until the end of the insurance period.

5. Section 9—Add provisions adding total destruction of all raisins in the unit, final adjustment of the loss, and abandonment of the raisins as events that end the insurance period to be consistent with other crop policies.

6. Section 11—Add provisions that authorize a reconditioning payment to be made when raisins are damaged by rain and are found to contain mold, embedded sand, micro-contamination in excess of Raisin Administrative Committee standards, or moisture in excess of 18 percent. Previous provisions allowed a reduction in the value of raisin tonnage to count when production was reconditioned, but did not provide any benefit unless the value of delivered tonnage minus the reconditioning allowance was less than the amount of insurance for the unit. This payment, like replant payments on certain annual crops, is intended to mitigate potentially larger insurance benefit payments.

7. Section 12—Add provisions indicating the specific information required from the insured when providing a notice of damage. Previous provisions did not specify what information was needed.

8. Section 13(f)—Add provisions indicating that raisins discarded from trays or that are lost from trays scattered in the vineyard as part of normal handling will not have a value to count against the amount of insurance. These raisins cannot be salvaged and should not be considered as production to count.

9. Section 14—Add provisions for providing insurance coverage by written agreement. FCIC has a long-standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for, and duration of, written agreements.

List of Subjects in 7 CFR Part 457

Crop insurance, Raisins, Reporting and recordkeeping requirements.

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1997 and succeeding crop years, as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. 7 CFR part 457 is amended by adding a new § 457.124 to read as follows:

§ 457.124 Raisin crop insurance provisions.

The Raisin Crop Insurance Provisions for the 1997 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Raisin Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Crop year—In lieu of the definition of ''Crop year'' contained in section 1 of the Basic Provisions (§ 457.8), the calendar year in which the raisins are placed on trays for drying.

Days—Calendar days.

Delivered ton—A ton of raisins delivered to a packer, processor, buyer or a reconditioner, before any adjustment for U. S. Grade B and better maturity standards, and after adjustments for moisture over 16 percent and substandard raisins over 5 percent.

Location and Unit Report—A report that contains information regarding the acreage in each unit on which you intend to produce raisins for the crop year and your share.

Non-contiguous land—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

RAC—The Raisin Administrative Committee, which operates under an order of the United States Department of Agriculture (USDA).

Raisins—The sun-dried fruit of varieties of grapes designated insurable by the Actuarial Table. These grapes will be considered raisins for the purpose of this policy when laid on trays in the vineyard to dry.

Substandard—Raisins that fail to meet the requirements of U.S. Grade C, or layer (cluster) raisins with seeds that fail to meet the requirements of U.S. Grade B.

Reference maximum dollar amount—The value per ton established by FCIC and shown in the Actuarial Table.

Table grapes—Grapes grown for commercial sale as fresh fruit on acreage where appropriate cultural practices were followed.

Ton—Two thousand pounds avoirdupois.

Tonnage report—A report used to annually report, by unit, all the tons of raisins produced in the county in which you have a share.

Written agreement—A written document that alters designated terms of this policy in accordance with section 14.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), may be divided into additional basic units by each grape variety you insure.

(b) Unless limited by the Special Provisions, a basic unit may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(e) All optional units established for a crop year must be identified on the location and unit report for that crop year.

(f) The following requirements must be met to qualify for separate optional units:

(1) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(2) Separate optional units must be located on non-contiguous land.

3. Amounts of Insurance and Production Reporting

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one coverage level percentage for all the raisins in the county insured under this policy.

(b) The amount of insurance for the unit will be determined by multiplying the insured tonnage by the reference maximum dollar amount, times the coverage level percentage you elect, and times your share.

(c) Insured tonnage is determined as follows:

(1) For units not damaged by rain—The delivered tons; or

(2) For units damaged by rain—By adding the delivered tons to any verified loss of production due to rain damage. When production from a portion of the acreage within a unit is removed from the vineyard and production from the remaining acreage is lost in the vineyard, the amount of production lost in the vineyard will be determined based on the number of tons of raisin produced on the acreage from which production was removed; and

(3) Insured tonnage will be reduced 0.12 percent for each 0.10 percent of moisture in excess of 16.0 percent. When raisins contain moisture in excess of 24.3 percent at the time of delivery and are released for a use other than dry edible fruit (e.g. distillery material), they will be considered to contain 24.3 percent moisture. For example, 10.0 tons of raisins containing 18.0 percent moisture will be reduced to 9.760 tons of raisins. In addition, raisin tonnage used for dry edible fruit will be reduced by 0.10 percent for each 0.10 percent of substandard raisins in excess of 5.0 percent.

(d) Section 3(c) of the Basic Provisions is not applicable to this crop.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is April 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are July 31.

6. Location and Unit Report and Tonnage Report

(a) In lieu of the provisions contained in section 6(a) of the Basic Provisions (§ 457.8) you must report by unit, and on our form, the acreage on which you intend to produce raisins for the crop year. This location and unit report must be submitted to us on or before the sales closing date, unless otherwise agreed to in writing, and contain the following information:

(1) All acreage of the crop (insurable and not insurable) in which you will have a share by unit;

(2) Your anticipated share at the time coverage will begin;

(3) The variety; and

(4) The location of each vineyard;

(b) If you fail to file a location and unit report in a timely manner, or if the information reported is incorrect, we may elect to deny liability on any unit.

(c) In addition to the location and unit report, you must annually report by unit, and on our form, the number of delivered tons of raisins, and if damage has occurred, the amount of any tonnage we determined was lost due to rain damage in the vineyard for each unit designated in the location and unit report.

(d) The report of tonnage must be submitted to us as soon as the information is available, but no later than March 1 of the year following the crop year. Indemnities may be determined on the basis of information you submitted on this report. If you do not submit this report by the reporting date, we may, at our option, either determine the insured tonnage and share by unit or we may deny liability on any unit. This report may be revised only upon our approval. Errors in reporting units may be corrected by us at any time we discover the error.

7. Annual Premium

In lieu of the premium computation method contained in section 7 (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium amount is determined by multiplying the amount of insurance for the unit at the time insurance attaches by the premium rate and then multiplying that result by any applicable premium adjustment factors that may apply.

8. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the raisins in the county of grape varieties for which a premium rate is provided by the Actuarial Table and in which you have a share.

(b) For the purpose of determining the amount of indemnity, your share will not exceed the lower of your share at either the time that the raisins are first placed on trays for drying or are removed from the vineyard.

(c) In addition to the raisins not insurable under section 8 (Insured Crop) of the Basic Provisions (§ 457.8), we do not insure any raisins:

(1) Laid on trays after September 8 in vineyards with north-south rows in Merced or Stanislaus Counties, or after September 20 in all other instances;

(2) From table grape strippings; or

(3) From vines that have had manual, mechanical, or chemical treatment to produce table grape sizing.

9. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), insurance attaches at the time the raisins are placed on trays for drying and ends the earlier of:

(a) October 20;

(b) The date the raisins are removed from the trays;

(c) The date the raisins are removed from the vineyard;

(d) Total destruction of all raisins on a unit;

(e) Final adjustment of a loss on a unit; or

(f) Abandonment of the raisins.

10. Causes of Loss.

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against unavoidable loss of production resulting from rain that occurs during the insurance period and while the raisins are on trays or in rolls in the vineyard for drying.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to inability to market the raisins for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of a person to accept production.

11. Reconditioning Requirements and Payment

(a) We may require you to recondition a representative sample of not more than 10 tons of damaged raisins to determine if they meet standards established by the RAC once reconditioned. If such standards are met, we may require you to recondition all the damaged production. If we require you to recondition any damaged production and if you do not do so, we will value the damaged production at the reference maximum dollar amount.

(b) If the representative sample of raisins that we require you to recondition does not meet RAC standards for marketable raisins after reconditioning, the reconditioning payment will be the actual cost you incur to recondition the sample, not to exceed an amount that is reasonable and customary for such reconditioning, regardless of the coverage level selected.

(c) A reconditioning payment, based on the actual (unadjusted) weight of the raisins, will be made if:

(1) Insured raisin production:

(i) Is damaged by rain within the insurance period;

(ii) Is reconditioned by washing with water and then drying;

(iii) Is insured at a coverage level greater than that applicable to the Catastrophic Risk Protection Plan of Insurance; and

(2) The damaged production undergoes an inspection by USDA and is found to contain mold, embedded sand, or micro-contamination in excess of standards established by the RAC, or is found to contain moisture in excess of 18 percent; or

(3) We give you consent to recondition the damaged production.

(d) Your request for consent to any wash-and-dry reconditioning must identify the acreage on which the production to be reconditioned was damaged in order to be eligible for a reconditioning payment.

(e) The reconditioning payment for raisins that meet RAC standards for marketable raisins after reconditioning will be the lesser of your actual cost for reconditioning or the amount determined by:

(1) Multiplying the greater of $125.00 or the reconditioning dollar amount per ton contained in the Special Provisions by your coverage level;

(2) Multiplying the result of 11(e)(1) by the actual number of tons of raisins (unadjusted weight) that are wash-and-dry reconditioned; and

(3) Multiplying the result of 11(e)(2) by your share.

(f) Only one reconditioning payment will be made for any lot of raisins damaged during the crop year. Multiple reconditioning payments for the same production will not be made.

12. Duties In The Event of Damage or Loss

(a) In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(1) If you intend to claim an indemnity on any unit, you must give us notice within 72 hours of the time the rain fell on the raisins. We may reject any claim for indemnity if such notice is later. You must provide us the following information when you give us this notice:

(i) The grape variety;

(ii) The location of the vineyard and number of acres; and

(iii) The number of trays upon which the raisins have been placed for drying.

(2) We will not pay any indemnity unless you:

(i) Authorize us in writing to obtain all relevant records from any raisin packer, raisin reconditioner, the RAC, or any other person who may have such records. If you fail to meet the requirements of this subsection, all insured production will be considered undamaged and included as production to count; and

(ii) Upon our request, provide us with records of previous years' production and acreage. This information may be used to establish the amount of insured tonnage when insurable damage results in discarded production.

(b) In lieu of the provisions in section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), that require you to submit a claim for indemnity not later than 60 days after the end of the insurance period, any claim for indemnity must be submitted to us not later than March 31 following the date for the end of the insurance period.

13. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the acreage from which raisins were removed for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured tonnage of raisins by the reference maximum dollar amount and your coverage level percentage;

(2) Subtracting from the total in paragraph (1) the total value of all insured damaged and undamaged raisins; and

(3) Multiplying the result of paragraph (2) by your share.

(c) Undamaged raisins or raisins damaged solely by uninsured causes will be valued at the reference maximum dollar amount.

(d) Raisins damaged partially by rain and partially by uninsured causes will be valued at the highest prices obtainable, adjusted for any reduction in value due to uninsured causes.

(e) Raisins that are damaged by rain, but that are reconditioned and meet RAC standards for raisins, will be valued at the reference maximum dollar amount.

(f) The value to count for any raisins produced on the unit that are damaged by rain and not removed from the vineyard will be the larger of the appraised salvage value or $35.00 per ton, except that any raisins that are damaged and discarded from trays or are lost from trays scattered in the vineyard as part of normal handling will not be considered to have any value. You must box and deliver any raisins that can be removed from the vineyard.

(g) At our sole option, we may acquire all the rights and title to your share of any raisins damaged by rain. In such event, the raisins will be valued at zero in determining the amount of loss and we will have the right of ingress and egress to the extent necessary to take possession, care for, and remove such raisins.

(h) Raisins destroyed or put to another use without our consent will be valued at the reference maximum dollar amount.

14. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in 14(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the amount of insurance per ton, and premium rate;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on October 21, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–27769 Filed 10–29–96; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF ENERGY

10 CFR Parts 703 and 1023

RIN 1901–AA30

Board of Contract Appeals; Contract Appeals

AGENCY: Board of Contract Appeals, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy is proposing to amend its regulations concerning proceedings and functions of the Board of Contract Appeals. This action is necessary to update the rules and to reorganize and supplement the existing rules to provide the public with a better understanding of the Board and its functions. The proposed rules would add an overview of the Board's organization, authorities, and various functions, enunciate longstanding policies favoring the use of Alternative Dispute Resolution (ADR) and confirm the Board's authority to engage in ADR and to provide an array of ADR neutral services, modify the Rules of Practice for Contract Disputes Act (CDA) appeals to implement changes made to the CDA by the Federal Acquisition Streamlining Act (FASA), and remove unnecessary and obsolete rules related to the Board's non-CDA appeals and Contract Adjustment Board functions.

DATES: Comments must be received by December 30, 1996.

ADDRESSES: Interested persons may submit written comments to: E. Barclay Van Doren, Chair, Department of Energy, Board of Contract Appeals, Room 1006, Webb Building, 4040 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: E. Barclay Van Doren, Chair, Department of Energy, Board of Contract Appeals, (703) 235–2700.

SUPPLEMENTARY INFORMATION:

I. Background

A. Discussion

This Rulemaking has several purposes. First, it would set out a statement of the organization, functions, and authorities of the Board of Contract Appeals (Board or EBCA) of the Department of Energy (DOE). The Board has functions other than the resolution of disputes brought under the Contract Disputes Act (CDA), yet the current rules do not list and describe these functions and their associated authorities in any single place. This has proven confusing to some who were unfamiliar with the Board. The proposed rules, in one place, describe and cross-reference all of the standing functions and rules of the Board. This proposed change should help those unfamiliar with the Board to understand its several functions and the limits of its authority, and to assist potential appellants to determine whether the Board is the proper forum for the resolution of a dispute. Moreover, the rule will provide, for informational purposes, the Board's delegated general authorities, which are set forth in a delegation order from the Secretary of Energy.

Second, this Rulemaking would enunciate the Board's and DOE's policy favoring the use of ADR. The current rules are outdated and neither recognize ADR nor summarize the Board and its members' authority to employ and participate in ADR procedures. The Board has a longstanding policy to encourage the consensual resolution of disputes and, thus, decrease the instances where parties must resort to litigation. The proposed rules contain an explicit statement of the Board's and DOE's policy regarding ADR.

Third, the Federal Acquisition Streamlining Act (FASA) modified the CDA with respect to matters involving claim certification and availability of certain appeal procedures. This Rulemaking would update the Board's rules of procedure to implement these changes. The Streamlining Act increased the threshold for CDA claim certification to $100,000, from $50,000. The Act also increased the amounts under which a claim is eligible for either accelerated procedures or small claims procedures. Claims under $100,000 (previously $50,000) will be eligible for accelerated procedures and claims under $50,000 (previously $10,000) will be, at the contractor's election, resolved under the small claims procedures.

Fourth, this Rulemaking proposes to remove the rules of practice for contract and subcontract appeals which are not governed by the CDA (10 CFR Part 703) (non-CDA appeals) and the rules of the Contract Adjustment Board (10 CFR Part 1023, subpart B). No pre-CDA appeals have been filed with the Board for more than eight years and separate rules no longer appear to be necessary. The Board proposes that the existing rules of practice for CDA appeals, with modifications (such as disregarding inapplicable rules related solely to CDA claim certification) determined by the Board to be appropriate, be made applicable to both CDA appeals and non-CDA appeals from contracting officer decisions and to any subcontractor disputes over which the Board has jurisdiction. Regulatory authority for appeals to the Contract Adjustment Board no longer exists and the rules of the Contract Adjustment Board would be removed.

Finally, the proposed Rulemaking would renumber the rules of practice for contract appeals to the Board to allow for the inclusion of the Statement of Organization, Functions, and Authorities and minor conforming changes would be made to the Rules of Practice.

B. Section-By-Section Analysis

The following analysis provides additional explanatory information regarding the intended effect of these rules if adopted as proposed. The proposed rules add an Overview which consists of sections 1023.1–1023.9. This Overview would reorganize and supplement the information contained in the current sections 1023.2–1023.6.

Overview: Organization, Functions and Authorities

Section 1023.1 Introductory Material on the Board and Its Functions

This section is self-explanatory. It describes the various standing functions performed by the Board and cross-references authorities and rules codified in other parts of Title 10, Code of Federal Regulations.

Section 1023.2 Organization and Location of the Board

This section is self-explanatory. It states the current location of the Board. It also outlines the basic makeup of Board personnel.

Section 1023.3 Principles of General Applicability

Paragraph (a) emphasizes that the Board is a neutral adjudicatory body which is to hear and decide all cases independently, fairly, and impartially. It further states that decisions shall be based exclusively upon the record, and would expressly proscribe consideration of any matter which might come to the attention of the Board by any means other than those provided by the various rules of practice. Paragraph (a) also reiterates a longstanding position of the Department that Board decisions, pursuant to the Contract Disputes Act or pursuant to a delegation of authority (provided the delegation does not provide otherwise), constitute final agency decisions and are not subject to administrative review.

Paragraph (b) would confirm the authority of the Board and its members and personnel to perform ADR related functions. It would also require adherence to a standard of procedural fairness, integrity, and diligence in activities related to ADR. The paragraph would permit limited ex parte communications related to ADR procedures until the parties enter into an approved ADR agreement, at which point, all communications would be controlled by that agreement. The paragraph would emphasize the obligation of Board personnel to maintain the confidentiality of ADR matters.

Section 1023.4 Authorities

This section would set forth duties and authorities provided by the CDA or delegated to the Board by the Secretary of Energy.

Paragraph (a) is self-explanatory. However, it recognizes that parties may agree to employ alternative procedures for dispute resolution under the CDA.

Paragraph (b) sets forth the Board's general powers.

Paragraph (c) sets forth delegated authorities which are set forth in a delegation order. Among these duties is the duty to hear and decide non-CDA appeals as provided by the provisions of acquisition and other contracts of the Department or by the authorized provisions of subcontracts under DOE contracts. Authorized activities include the adjudication of facts related to proposed debarments when referred to the Board by the Deputy Assistant Secretary for Procurement and Assistance Management.

Section 1023.5 Duties and Responsibilities of the Chair

The position title ''Chairman'' would be changed to the gender-neutral ''Chair.'' The duties and responsibilities of the Chair would be strengthened and expanded to enable the Chair to improve the efficiency and timeliness of Board proceedings. Additionally, the Chair would be granted new express authorities with respect to ADR, such as arranging third party neutral participation. To the extent the described authorities are authorities granted by statute to the Board, all members of the Board concur in their exercise by the Chair and have delegated their authority to the Chair.

Section 1023.6 Duties and Responsibilities of Board Members and Staff

Paragraph (a) would establish the supplemental conduct guidelines for Board judges and staff which are in addition to existing laws and rules of general and specific applicability.

Paragraph (b) would authorize any administrative judge or Board employee to perform any authorized ADR responsibility or function.

Paragraph (c) would make explicit existing policies regarding ex parte communications in all Board judicial functions. It would also establish a permanent bar against disclosing Board deliberations.

Section 1023.7 Board Decisions; Assignment of Judges

This section would retain the existing general rule that cases are decided by a majority vote of a panel of not less than three Administrative Judges (or Hearing Officers) and would provide Presiding Judges and Officers with broad authority to act for the Board on all but dispositive matters. However, in a change from the existing rule, it would no longer be necessary for all members of a panel to participate in a decision if a concurring majority exists. This paragraph contains additional provisions which would allow the Board to respond to variable circumstances and requirements of the parties. It also would establish the Chair's authority to assign an additional judge to a panel in case of a tie vote.

Section 1023.8 Alternative Dispute Resolution (ADR)

This section would state that it is the policy of the DOE and the Board to encourage voluntary ADR proceedings, where appropriate, in an effort to resolve disputes in the most expeditious and inexpensive manner. Settlement discussions and mediation efforts have long been aspects of judicial decision-making. It is the Department's intention that alternative dispute resolution before the Board be recognized as a core judicial function of the Board. As such, Board personnel are involved in a judicial function and are entitled to judicial immunity as accorded by law.

Section 1023.9 General Guidelines

Paragraph (a) would carry forward the current Board authority to provide for circumstances not contemplated by the rules. It would also recognize that the Federal Rules of Civil Procedure may be looked to as a source of guidance, but that Board proceedings are required to be as informal, efficient and inexpensive as practicable, and thus the Board is not bound by them.

Paragraph (b) would provide explicit authority to a Presiding Judge or Hearing Officer to issue prehearing orders varying the procedures and limitations set forth in the various Rules of Practice and Rules of Procedure. This authority would explicitly authorize judges to tailor procedural schedules to the circumstances and requirements of individual cases.

Section 1023.20 Rules of Practice

This section would be redesignated as § 1023.120.

Subpart A—Rules of the Board of Contract Appeals

Section 1023.101 Scope and Purpose

This section would state the scope of the rules contained in Subpart A. It should be noted that this Rulemaking would rescind 10 CFR Part 703, which currently contains the rules of practice for pre-CDA contract appeals and certain subcontract appeals to the Board. This section would provide that the rules contained in this subpart would not only be applicable to CDA proceedings, but also to pre-CDA and other non-CDA contract appeals, as well as subcontractor appeals, with such modifications determined by the Board to be appropriate to the nature of the dispute.

Section 1023.102 Effective Date

This section details the effective date of the rules and also the effective date of the modifications to the rules made in compliance with the Federal Acquisition Streamlining Act (FASA), Pub. L. 103–355 (1994).

Section 1023.120 Rules of Practice

This section is the existing section 1023.20. Modifications would be made to this section to reflect changes to the CDA made by FASA.

Rule 1 would be modified by substituting ''$100,000'' wherever ''$50,000'' is found. Rule 6 would be modified by substituting ''$100,000'' for ''$50,000'' and substituting ''$50,000'' where ''$10,000'' appears. Rule 13 would substitute ''$50,000'' for ''$10,000'' and Rule 14 would substitute ''$100,000'' for ''$50,000.''

Subpart B

All sections under this subpart would be removed and the subpart reserved for future use.

II. Procedural Requirements

A. Review under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulation in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

C. Review under the Regulatory Flexibility Act

The proposed rules were reviewed under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any proposed rule which is likely to have a significant economic impact on a substantial number of small entities. The DOE certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities; therefore, no regulatory flexibility analysis has been prepared.

D. Review under the Paperwork Reduction Act

The DOE has determined that the proposed rules are exempt from the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) by virtue of 44 U.S.C. 3518(c)(1)(B), which provides that the Paperwork Reduction Act does not apply to the collection of information during the conduct of an administrative action involving an agency against specific individuals or entities.

E. Review under the National Environmental Policy Act

The DOE has concluded that promulgation of these rules would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), or the Council on Environmental Quality Regulations (40 CFR parts 1500–08), and the DOE guidelines (10 CFR part 1021), and, therefore, does not require an environmental impact statement or an environment assessment pursuant to NEPA.

F. Review under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

These proposed rules, when finalized, will revise certain policy and procedural requirements. However, the DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

III. Public Comments

Interested persons are invited to participate in this Rulemaking by submitting data, views, or arguments with respect to the proposed rules set forth in this notice. Comments should be submitted to the address for the DOE Board of Contract Appeals given at the beginning of this notice. All comments received on or before the date specified in the beginning of this notice, and all other relevant information, will be considered by the Board before taking final action on the proposed rules.

This notice of proposed Rulemaking does not involve any substantial issues of law or fact and the proposed rules should not have substantial impact on the nation's economy or large numbers of individuals or businesses. Accordingly, pursuant to Pub. L. 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the DOE does not plan to hold a public hearing on these proposed rules.

List of Subjects in 10 CFR Parts 1023 and 703

Administrative practice and procedure, Government contracts, Government procurement.

Issued in Washington, D. C. on October 23, 1996.

E. Barclay Van Doren,

Chair, Department of Energy, Board of Contract Appeals.

For the reasons set forth in the Preamble, Parts 703 and 1023 of Title 10 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 703—CONTRACT APPEALS

1. Part 703 is removed.

PART 1023—CONTRACT APPEALS

2. The authority citation is revised to read as follows:

Authority: 42 U.S.C. §§ 2201, 5814, 7151, 7251; 5 U.S.C. § 301; 41 U.S.C. §§ 321, 322, 601–613; 5 U.S.C. §§ 571–583; 9 U.S.C. §§ 1–16.

3. Part 1023 is proposed to be amended by adding an Overview before subpart A consisting of sections 1023.1 through 1023.9:

PART 1023—CONTRACT APPEALS

Overview: Organization, Functions and Authorities

Sec.

§ 1023.1 Introductory material on the Board and its functions.

(a) The Energy Board of Contract Appeals (''EBCA'' or ''Board'') functions as a separate quasi-judicial entity within the Department of Energy (DOE). The Secretary has delegated to the Board's Chair the appropriate authorities necessary for the Board to maintain its separate operations and decisional independence.

(b) The Board's primary function is to hear and decide appeals from final decisions of DOE contracting officers on claims pursuant to the Contract Disputes Act of 1978 (CDA), 41 U.S.C. 601 *et seq.* The Board's Rules of Practice for these appeals are set forth in subpart A of this part. Rules relating to recovery of attorney fees and other expenses under the Equal Access to Justice Act are set forth in subpart C of this part.

(c) In addition to its functions under the CDA, the Secretary in Delegation Order 0204–162 has authorized the Board to:

(1) Adjudicate appeals from agency contracting officers' decisions not taken pursuant to the CDA (non-CDA disputes) under the Rules of Practice set forth in subpart A of this part;

(2) Perform other quasi-judicial functions that are consistent with the Board members' duties under the CDA as directed by the Secretary.

(3) Serve as the Energy Financial Assistance Appeals Board to hear and decide certain appeals by the Department's financial assistance recipients as provided in 10 CFR 600.22, under Rules of Procedure set forth in 10 CFR part 1024;

(4) Serve as the Energy Invention Licensing Appeals Board to hear and decide appeals from license terminations, denials of license applications and petitions by third-parties for license terminations, as provided in 10 CFR part 781, under Rules of Practice set forth in subpart A of this part, modified by the Board as determined to be necessary and appropriate with advance notice to the parties; and

(5) Serve as the Energy Patent Compensation Board to hear and decide, as provided in 10 CFR part 780, certain applications and petitions filed under authority provided by the Atomic Energy Act of 1954, ch. 1073, 68 Stat. 919 (1954), and the Invention Secrecy Act, 35 U.S.C. 181–188, including:

(i) Whether a patent is affected with the public interest;

(ii) Whether a license to a patent affected by the public interest should be granted and equitable terms therefor; and

(iii) Whether there should be allotment of royalties, award, or compensation to a party contributing to the making of certain categories of inventions or discoveries, or an owner of a patent within certain categories, under Rules of Practice set forth in subpart A of this part, modified by the Board as determined to be necessary and appropriate, with advance notice to the parties.

(d) The Board provides alternative disputes resolution neutral services and facilities, as agreed between the parties and the Board, for:

(1) Disputes related to the Department's prime contracts and to financial assistance awards made by the Department.

(2) Disputes related to contracts between the Department's cost-reimbursement contractors, including Management and Operating Contractors (M&Os) and Environmental Remediation Contractors (ERMCs), and their subcontractors. Additionally, with the consent of both the responsible prime DOE cost-reimbursement contractor and the cognizant DOE contracting officer, the Board may provide neutral services and facilities for disputes under second tier subcontracts where the costs of litigating the dispute might be ultimately charged to the DOE as allowable costs through the prime contract.

(3) Other matters involving DOE procurement and financial assistance, as appropriate.

§ 1023.2 Organization and location of the Board.

(a) The Board is located in the Washington, D.C. metropolitan area and its address is Energy Board of Contract Appeals, Room 1006, 4040 North Fairfax Drive, Arlington, Virginia, 22203. The Board's telephone numbers are (703) 235–2700 (voice) and (703) 235–3566 (facsimile).

(b) As required by the CDA, the Board consists of a Chair, a Vice Chair, and at least one other member. Members are designated Administrative Judges. The Chair is designated Chief Administrative Judge and the Vice Chair, Deputy Chief Administrative Judge.

§ 1023.3 Principles of general applicability.

(a) *Adjudicatory functions.* The following principles shall apply to all adjudicatory activities whether pursuant to the authority of the CDA, authority delegated under this part, or authority of other laws, rules, or directives.

(1) The Board shall hear and decide each case independently, fairly, and impartially.

(2) Decisions shall be based exclusively upon the record established in each case. Written or oral communication with the Board by or for one party is not permitted without participation or notice to other parties. Except as provided by law, no person or agency, directly or indirectly involved in a matter before the Board, may submit off the record to the Board or the Board's staff any evidence, explanation, analysis, or advice (whether written or oral) regarding any matter at issue in an appeal, nor shall any member of the Board or of the Board's staff accept or consider ex parte communications from any person. This provision does not apply to consultation among Board members or staff or to other persons acting under authority expressly granted by the Board with notice to parties. Nor does it apply to communications concerning the Board's administrative functions or procedures, including ADR.

(3) Decisions of the Board shall be final agency decisions and shall not be subject to administrative appeal or administrative review.

(b) *Alternative Dispute Resolution (ADR) functions.* (1) Board judges and personnel shall perform ADR related functions impartially, with procedural fairness, and with integrity and diligence.

(2) Ex parte communications with Board staff and judges limited to the nature, procedures, and availability of ADR through the Board are permitted and encouraged. Once parties have agreed to engage in ADR and have entered into an ADR agreement accepted by the Board, ex parte communications by Board neutrals, support staff and parties shall be as specified by any applicable agreements or protocols and as is consistent with law, integrity, and fairness.

(3) Board-supplied neutrals and support personnel shall keep ADR matters confidential and comply with any confidentiality requirements of ADR agreements accepted by the Board. Board personnel may not disclose any confidential information unless permitted by the parties or required to do so by law.

§ 1023.4 Authorities.

(a) *Contract Disputes Act authorities.* The CDA imposes upon the Board the duty, and grants it the powers necessary, to hear and decide, or to otherwise resolve through agreed procedures, appeals from decisions made by agency contracting officers on contractor claims relating to contracts entered into by the DOE or relating to contracts of another agency, as provided in Section 8(d) of the CDA, 41 U.S.C. 607(d). The Board may issue rules of practice or procedure for proceedings pursuant to the CDA. The CDA also imposes upon the Board the duty, and grants it powers necessary, to act upon petitions for orders directing contracting officers to issue decisions on claims relating to such contracts. 41 U.S.C. 605(c)(4). The Board may apply through the Attorney General to an appropriate United States District Court for an order requiring a person, who has failed to obey a subpoena issued by the Board, to produce evidence or to give testimony, or both. 41 U.S.C. 610.

(b) *General powers and authorities.* The Board's general powers include, but are not limited to, the powers to:

(1) Manage its cases and docket; issue procedural orders; conduct conferences and hearings; administer oaths; authorize and manage discovery, including depositions and the production of documents or other evidence; take official notice of facts within general knowledge; call witnesses on its own motion; engage experts; dismiss actions with or without prejudice; decide all questions of fact or law raised in an action; and make and publish rules of practice and procedure;

(2) Exercise, in proceedings to which it applies, all powers granted to arbitrators by the Federal Arbitration Act, 9 U.S.C. 1–14, including the power to issue summonses.

(c) In addition to its authorities under the CDA, the Board has been delegated by Delegation Order 0204–162 issued by the Secretary of Energy, the following authorities:

(1) Issue rules, including rules of procedure, not inconsistent with this section and departmental regulations;

(2) Issue subpoenas under the authority of section 161(c) of the Atomic Energy Act of 1954, 42 U.S.C. 2201(c), as applicable;

(3) Such other authorities as the Secretary may delegate.

1023.5 Duties and responsibilities of the Chair.

The Chair shall be responsible for the following:

(a) The proper administration of the Board;

(b) Assignment and reassignment of cases, including alternative dispute resolution (ADR) proceedings, to administrative judges, hearing officers, and decision panels;

(c) Monitoring the progress of individual cases to promote their timely resolution;

(d) Appointment and supervision of a Recorder;

(e) Arranging for the services of masters, mediators, and other neutrals;

(f) Issuing delegations of Board authority to individual administrative judges, panels of judges, commissioners, masters, and hearing officers within such limits, if any, which a majority of the members of the Board shall establish;

(g) Designating an acting chair during the absence of both the Chair and the Vice Chair;

(h) Designating a member of another Federal board of contract appeals to serve as the third member of a decision panel if the Board is reduced to less than three members because of vacant positions, protracted absences, disabilities or disqualifications;

(i) Authorizing and approving ADR arrangements for Board cases; obtaining non-Board personnel to serve as settlement judges, third-party neutrals, masters and similar capacities; authorizing the use of Board-provided personnel and facilities in ADR capacities, for matters before the Board, and for other matters when requested by officials of the DOE; and entering into arrangements with other Federal administrative forums for the provision of personnel to serve in ADR capacities on a reciprocal basis;

(j) Recommending to the Secretary the selection of qualified and eligible members. New members shall, upon selection, be appointed to serve as provided in the CDA;

(k) Determining whether member duties are consistent with the CDA; and

(l) Reporting Board activities to the Secretary not less often than biennially.

§ 1023.6 Duties and responsibilities of Board members and staff.

(a) As is consistent with the Board's functions, Board members and staff shall perform their duties with the highest integrity and consistent with the principles set forth in § 1023.3.

(b) Members of the Board and Board attorneys may serve as commissioners, magistrates, masters, hearing officers, arbitrators, mediators, and neutrals and in other similar capacities.

(c) Except as may be ordered by a court of competent jurisdiction, members of the Board and its staff are permanently barred from ex parte disclosure of information concerning any Board deliberations.

§ 1023.7 Board decisions; Assignment of judges.

(a) In each case, the Chair shall assign an administrative judge as the Presiding Administrative Judge to hear a case and develop the record upon which the decision will be made. A Presiding Judge has authority to act for the Board in all non-dispositive matters, except as otherwise provided in this part. This paragraph shall not preclude the Presiding Administrative Judge from taking dispositive actions as provided in this part or by agreement of the parties. Other persons acting as commissioners, magistrates, masters, or hearing officers shall have such powers as the Board shall delegate.

(b) Except as provided by law, rule, or agreement of the parties, contract appeals and other cases are assigned to a deciding panel established by the Board Chair consisting of two or more administrative judges.

(c) The concurring votes of a majority of a deciding panel shall be sufficient to decide an appeal. All members assigned to a panel shall vote unless unavailable. The Chair will assign an additional member if necessary to resolve tie votes.

§ 1023.8 Alternative Dispute Resolution (ADR).

(a) *Statement of policy.* It is the policy of the DOE and of the Board to facilitate consensual resolution of disputes and to employ ADR in all of the Board's functions when agreed to by the parties. ADR is a core judicial function performed by the Board and its judges.

(b) *ADR for docketed cases.* Pursuant to the agreement of the parties, the Board, in an exercise of discretion, may approve either the use of Board-annexed

ADR (ADR which is conducted under Board auspices and pursuant to Board order) or the suspension of the Board's procedural schedule to permit the parties to engage in ADR outside of the Board's purview. While any form of ADR may be employed, the forms of ADR commonly employed using Board judges as neutrals are: case evaluation by a settlement judge (with or without mediation by the judge); arbitration; mini-trial; summary (time and procedurally limited) trial with one-judge, summary binding (non-appealable) bench decision; and fact-finding.

(c) *ADR for non-docketed disputes.* As a general matter the earlier a dispute is identified and resolved, the less the financial and other costs incurred by the parties. When a contract is not yet complete there may be opportunities to eliminate tensions through ADR and to confine and resolve problems in a way that the remaining performance is eased and improved. For these reasons, the Board is available to provide a full range of ADR services and facilities before, as well as after, a case is filed with the Board. A contracting officer's decision is not a prerequisite for the Board to provide ADR services and such services may be furnished whenever they are warranted by the overall best interests of the parties. The forms of ADR most suitable for mid-performance disputes are often the non-dispositive forms such as mediation, facilitation and fact-finding, mini-trials, or non-binding arbitration, although binding arbitration is also available.

(d) *Availability of information on ADR.* Parties are encouraged to consult with the Board regarding the Board's ADR services at the earliest possible time. A handbook describing Board ADR is available from the Board upon request.

§ 1023.9 General guidelines.

(a) The principles of this Overview shall apply to all Board functions unless a specific provision of the relevant rules of practice applies. It is, however, impractical to articulate a rule to fit every circumstance. Accordingly, this part, and the other Board Rules referenced in it, will be interpreted and applied consistent with the Board's responsibility to provide just, expeditious, and inexpensive resolution of cases before it. When Board rules of procedure do not cover a specific situation, a party may contend that the Board should apply pertinent provisions from the Federal Rules of Civil Procedure. However, while the Board may refer to the Federal Rules of Civil Procedure for guidance, such Rules are not binding on the Board absent a ruling or order to the contrary.

(b) The Board is responsible to the parties, the public, and the Secretary for the expeditious resolution of cases before it. Accordingly, subject to the objection of a party, the procedures and time limitations set forth in rules of procedure may be modified, consistent with law and fairness. Presiding judges and hearing officers may issue prehearing orders varying procedures and time limitations if they determine that purposes of the CDA or the interests of justice would be advanced thereby and provided both parties consent. Parties should not consume an entire period authorized for an action if the action can be sooner completed. Informal communication between parties is encouraged to reduce time periods whenever possible.

(c) The Board shall conduct proceedings in compliance with the security regulations and requirements of the Department or other agency involved.

3a. Subpart A is amended by removing §§ 1023.1 through 1023.6, redesignating § 1023.20 as 1023.120 and adding §§ 1023.101 and 1023.102, reading as follows:

§ 1023.101 Scope and purpose.

The rules of the Board of Contract Appeals are intended to govern all appeal procedures before the Department of Energy Board of Contract Appeals (Board) which are within the scope of the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*). Those rules, with modifications determined by the Board to be appropriate to the nature of the dispute, also apply to all other contract and subcontract related appeals which are properly before the Board.

§ 1023.102 Effective date.

The rules of the Board of Contract Appeals shall apply to all proceedings filed on or after [30 days after publication of the final rule], except that Rule 1(a) and (b) of § 1023.120 shall apply only to appeals filed on or after [the effective date of 48 CFR 33.211].

§ 1023.120 [Amended]

4. Newly designated section 1023.120 is amended by revising ''$50,000'' to read ''$100,000'' in the following paragraphs:

Rule 1, paragraph (b)
Rule 1, paragraph (c)
Rule 6, paragraph (b)
Rule 14, paragraph (a)

5. Newly designated section 1023.120 is amended by revising ''$10,000'' to read ''$50,000'' in the following paragraphs:

Rule 6, paragraph (b)
Rule 13, paragraph (a)

Subpart B—[Removed and Reserved]

6. Subpart B is removed and reserved.

§ 1023.327 [Amended]

7. Section 1023.327 of Subpart C is amended by revising ''10 CFR 1023.20'' to read ''10 CFR 1023.120.''

[FR Doc. 96–27683 Filed 10–29–96; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–10–AD]

Airworthiness Directives; Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, 269D, and TH–55A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, 269D, and TH–55A series helicopters. This proposal would require a visual inspection of the bond line between the main rotor blade (blade) abrasion strip (abrasion strip) and the blade for voids, separation, or lifting of the abrasion strip; a visual inspection of the adhesive bead around the perimeter of the abrasion strip for erosion, cracks, or blisters; a tap (ring) test of the blade abrasion strip for evidence of debonding or hidden corrosion voids; and removal of any blade with an unairworthy abrasion strip and replacement with an airworthy blade. This proposal is prompted by four reports that indicate that debonding and corrosion have occurred on certain blades where the blade abrasion strip attaches to the blade skin. The actions specified by the proposed AD are intended to prevent loss of the abrasion strip from the blade and subsequent loss of control of the helicopter.

DATES: Comments must be received by December 30, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–10–AD, 2601

Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Casale, Aerospace Engineer, FAA, New York Aircraft Certification Office, Airframe and Propulsion Branch, Engine and Propeller Directorate, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200, telephone (516) 256–7521, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ‘‘Comments to Docket No. 96–SW–10–AD.’’ The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–10–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes to adopt a new airworthiness directive (AD) that is applicable to certain serial-numbered main rotor blades installed on Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, 269D, and TH–55A series helicopters. Reports indicate that debonding and corrosion have occurred on certain main rotor blades where the main rotor blade abrasion strip attaches to the main rotor blade skin. This condition, if not corrected, could result in loss of the abrasion strip from the main rotor blade and subsequent loss of control of the helicopter.

The FAA has reviewed Schweizer Service Bulletin (SB) B–259.1, dated August 22, 1995, for the Model 269A, 269A–1, 269B, 269C, and TH–55A series helicopters, and SB DB–001.1, dated August 22, 1995, for the Model 269D series helicopters, which describe procedures for a visual inspection of the bond line between the abrasion strip and the main rotor blade for voids, separation, or lifting of the abrasion strip; a visual inspection of the adhesive bead around the perimeter of the abrasion strip for erosion, cracks, or blisters; a tap (ring) test of the blade abrasion strip for evidence of debonding or hidden corrosion voids; and removal of any blade with a defective abrasion strip for return to Schweizer Aircraft Corporation or an FAA-approved repair facility for repair. If any deterioration of the abrasion strip adhesive bead is discovered, the service bulletins prescribe restoration of the bead in accordance with the applicable maintenance manual. If an abrasion strip void is found or suspected, the blade must be removed and may be returned to Schweizer Aircraft Corporation or an FAA-approved repair facility for repair.

Since an unsafe condition has been identified that is likely to exist or develop on other Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, 269D, and TH–55A series helicopters of the same type design, the proposed AD would require, on each blade, a visual inspection of the bond line between the abrasion strip and the main rotor blade for voids, separation, or lifting of the abrasion strip; a visual inspection of the adhesive bead around the perimeter of the abrasion strip for erosion, cracks, or blisters; a tap (ring) test of the blade abrasion strip for evidence of debonding or hidden corrosion voids; and removal of any blade with a defective abrasion strip and replacement with an airworthy blade. If any deterioration of the abrasion strip adhesive bead is discovered, restoration of the bead in accordance with the applicable maintenance manual is proposed. If an abrasion strip void is found or suspected, removing and replacing the blade with an airworthy blade is proposed.

The FAA estimates that 100 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately one-third of a work hour per helicopter to conduct the initial inspections; approximately one-third of a work hour to conduct the repetitive inspections; approximately 11 work hours to remove and reinstall a blade; and approximately 32 work hours to repair the blade; and that the average labor rate is $60 per work hour. Required parts (replacement abrasion strips) would cost approximately $57 per main rotor blade abrasion strip (each helicopter has three main rotor blades). Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $135,850 per year for the first year and $133,850 for each year thereafter, assuming one-sixth of the affected blades in the fleet are removed, repaired, and reinstalled each year, and that all affected helicopters are subjected to one repetitive inspection each year.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ‘‘significant regulatory action’’ under Executive Order 12866; (2) is not a ‘‘significant rule’’ under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Schweizer Aircraft Corporation and Hughes Helicopters, Inc.: Docket No. 96–SW–10–AD.

Applicability: Model 269A, 269A–1, 269B, and TH–55A series helicopters with main rotor blades, part number (P/N) 269A1190–1, serial numbers (S/N) S0001 through S0012 installed; and Model 269C and Model 269D series helicopters with main rotor blades, P/N 269A1185–1, S/N S222, S312, S313, S325 through S327, S339, S341, S343, S346, S347, S349 through S367, S369 through S377, S379 through S391, S393 through S395, S397, S399, S401 through S417, S419 through S424, S426 through S449, S451 through S507, S509 through S513, S516 through S527, S529 through S540, S542, S544 through S560, S562 through S584, S586 through S595, S597 though S611, S620 through S623, S625, S628, S633, S641 through S644, S646, S653, S658, S664, S665, and S667, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the abrasion strip from the main rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS), or within 90 calendar days after the effective date of this AD, whichever is earlier, or prior to installing an affected replacement main rotor blade, and thereafter at intervals not to exceed 50 hours TIS from the date of the last inspection or replacement installation:

(1) Visually inspect the adhesive bead around the perimeter of each main rotor blade abrasion strip for erosion, cracks, or blisters.

(2) Visually inspect the bond line between each abrasion strip and each main rotor blade skin for voids, separation, or lifting of the abrasion strip.

(3) Inspect each main rotor blade abrasion strip for debonding or hidden corrosion voids using a tap (ring) test as described in the applicable maintenance manual.

(b) If any deterioration of an abrasion strip adhesive bead is discovered, prior to further flight, restore the bead in accordance with the applicable maintenance manual.

(c) If abrasion strip debonding, separation, or a hidden corrosion void is found or suspected, prior to further flight, remove the blade with the defective abrasion strip and replace it with an airworthy blade.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished, provided the abrasion strip has not started to separate or debond from the main rotor blade.

Issued in Fort Worth, Texas, on October 22, 1996.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–27755 Filed 10–29–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–CE–45–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Mitsubishi Heavy Industries, Ltd. (Mitsubishi) MU–2B series airplanes. The proposed action would require removing the vent check valve assembly from the bulkhead between the fuel tanks. The proposed action results from an incident where both engines on an affected airplane failed during the end of a flight. The incident is attributed to the fuel filler caps on the top of the wings not sealing correctly. The actions specified by the proposed AD are intended to prevent the inability of both engines to utilize the entire fuel supply because of the outboard fuel not transferring to the center tank, which could result in an uncommanded engine shutdown.

DATES: Comments must be received on or before January 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Eric M. Smith, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard., Lakewood, California 90712; telephone (310) 627–5260; facsimile (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–45–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received a report of an incident where both engines on a Mitsubishi MU–2B series airplane failed during the end of a flight. The airplane landed in a field short of the runway. Investigation of the accident revealed fuel leakage from the fuel filler caps. This is attributed to the fuel filler caps not sealing properly. This condition, if not detected and corrected, could result in outboard fuel not transferring to the center tank, which would make this fuel unavailable to both engines.

Explanation of the Applicable Service Information

Mitsubishi MU–2 Service Bulletin (SB) No. 130A, dated July 19, 1971, specifies procedures for removing the vent check valve assembly from the bulkhead between the fuel tanks. When the vent check valve assembly is removed in accordance with this service bulletin, fuel will transfer to the center tank regardless of the condition of the fuel filler cap seal.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent the inability of both engines to utilize the entire fuel supply because of the outboard fuel not transferring to the center tank, which could result in an uncommanded engine shutdown.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Mitsubishi MU–2B series airplanes of the same type design, the proposed AD would require removing the vent check valve assembly from the bulkhead between the fuel tanks. Accomplishment of the proposed action would be in accordance with Mitsubishi MU–2 SB No. 130A, dated July 19, 1971.

Compliance Time of the Proposed AD

The compliance time for the proposed AD is presented in calendar time instead of hours time-in-service. The fuel filler cap may not seal properly regardless of whether the airplane is in operation. For this reason, the FAA has determined that a calendar time for compliance is the most desirable for the proposed AD.

Cost Impact

The FAA estimates that 14 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours (average: 4 workhours for 7 airplanes and 2 workhours for 7 airplanes) per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,520.

The above figure is based on the assumption that no owner/operator of the affected airplanes has accomplished the proposed vent check valve assembly removal. The FAA is aware that 7 of the affected airplanes are already in compliance with the proposed action. With this information in mind, the cost impact upon U.S. operators/owners would be reduced by $1,260 from $2,520 to $1,260.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Mitsubishi Heavy Industries, Ltd.: Docket No. 96–CE–45–AD. Applicability: Models MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, and MU–2B–30 airplanes (serial numbers 004 through 035, 037, 038, 101 through 230, 502 through 525, and 527 through 547), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 60 calendar days after the effective date of this AD, unless already accomplished.

To prevent the inability of both engines to utilize the entire fuel supply because of the outboard fuel not transferring to the center tank, which could result in an uncommanded engine shutdown, accomplish the following:

(a) Remove the vent check valve assembly in accordance with the instructions in Mitsubishi MU–2 Service Bulletin No. 130A, dated July 19, 1971.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 22, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27757 Filed 10–29–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Ch. II

Meeting on Federal Oil and Gas Royalty Simplification and Fairness Act of 1996

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS), Royalty Management Program, is analyzing the requirements of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 and developing strategies to implement this Act. The purpose of this notice is to inform the public of MMS's intention to consult with affected parties about the changes to MMS processes required by this Act and describe the method MMS will use to obtain input from the public.

DATES: A public meeting will be held on Tuesday, November 19, 1996, from 1 p.m. until 5 p.m.

ADDRESSES: The meeting will be held in the Building 85 Auditorium on the Denver Federal Center. Mail comments to: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165, courier delivery to Building 85, Denver Federal Center, Denver, Colorado, or e-mail David-Guzy@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Rules and Procedures Staff, telephone (303) 231–3432, Fax (303) 231–3194, or e-mail David__Guzy@smtp.mms.gov. State and industry organizational representatives are listed below:

American Petroleum Institute

Richard McPike, Fina Oil, P.O. Box 2159, Dallas, Texas 75221, (214) 750–2820, Fax: (214) 750–2987

Backup: David Deal, 1220 L. Street N.W., Washington, DC 20005, (202) 682–8261, Fax: (202) 682–8033

Council of Petroleum Accounting Societies

Bill Stone, Exxon, P. O. Box 2024, Houston, Texas 77252–2024, (713) 680–7667, Fax: (713) 680–5280

Domestic Petroleum Council

David Blackmon, Meridian Oil, 801 Cherry, Suite 700, Fort Worth, Texas 76102, (817) 347–2354, Fax: (817) 347–2877

Independent Petroleum Association of America

Ben Dillon, 1101 16th St N.W., Washington, DC 20036, (202) 857–4722, Fax: (202) 857–4799

Independent Petroleum Association of Mountain States

Barbara Widick, 518 17th Street, Denver, Colorado 80202–4167, (303) 623–0987, Fax: (303) 893–0709

Mid-Continent Oil & Gas Association

Patty Patten, OXY USA, Inc., 110 W. 7th Street, Tulsa, Oklahoma 74137, (918) 561–3703, Fax: (918) 561–4364

Natural Gas Supply Association

George Butler, Chevron, P.O. Box 3725, Houston, Texas 77213–3725, (713) 754–7809, Fax: (713) 754–3366

Rocky Mountain Oil & Gas Association

Mary Stonecipher, Amoco Corporation, P.O. Box 591, Tulsa, Oklahoma 74102, (918) 581–4354, Fax: (918) 581–4526, Backup: Carla Wilson, 1775 Sherman Street, Suite 2501, Denver, Colorado 80203, (303) 860–0099, Fax: (303) 860–0310

Royalty Policy Committee

Don Hoffman, Department of Revenue, State of Montana, Mitchell Building, Room 330, Helena, Montana 59620, (406) 444–3587, Fax: (406) 444–2900

State and Tribal Royalty Audit Committee

Wanda Fleming, Montana Department of Revenue, P.O. Box 202701, Helena, Montana 59620–2701, (406) 444–3573, Fax: (406) 444–3696

Western Governors' Association

Paul Kruse, Assistant Director, Federal Land Policy, State of Wyoming, Herschler Building, 3 West, 121 West 25th Street, Cheyenne, Wyoming 82002–0600, (307) 777–7331, Fax: (307) 777–5400

Western States Land Commissioners Association

Maurice Lierz, New Mexico State Land Office, P.O. Box 1148, Santa Fe, New Mexico 87504–1148, (505) 827–5735, Fax: (505) 827–4262

or contact Mike Miller, MMS at (303) 231–3413 or via e:Mail at Mike__Miller@smtp.mms.gov.

SUPPLEMENTARY INFORMATION: President Clinton signed the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA) on August 13, 1996, to improve the management of royalties from Federal and Outer Continental Shelf oil and gas leases. This is the first major legislation affecting royalty management since the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) was passed in January 1983. The key issues of RSFA implementation listed by near term and longer term focus are:

Near Term Focus

- Report and Pay/Credit Interest on Overpayments.
- Accept Interest Payments and Reporting from ''Designees'' on Underpayments.
- Issue Enforceable Demands (Orders to Pay) to Operating Rights. Owners Related to Production Occurring After 8/31/96.
- Implement the Repeal of Section 10 of the Outer Continental Shelf Lands Act.
- Provide for Self Bonding for Appeals Relating to Underpayments of Production After 09/01/96.
- Implement Section 205 Amendments (State Delegations) in Consultation With States.
- Implement Reporting Requirements on Takes/Entitlement Basis.
- Implement Marginal Properties Exception to RSFA Entitlement Reporting Requirements.
- Provide Accounting, Reporting, and Auditing Relief for Marginal Properties.
- Process Written Refund Requests Within 120 Days of Receipt.

• Address Cost/Benefit Provision of the RSFA.

Long Term Focus

• BLM/OMM Approval of Unit/ Communitization Agreements Within 120 Days.
• Monitor Adjustments Beyond the ''6-year Adjustment Period'' or Closed Audit Periods for Production After 09/ 01/96.
• Assess for Chronic Erroneous Reporting.
• Resolve and Bill, if Appropriate, Existing Takes/Entitlement Issues as of RSFA (08/13/96) Within 2 Years.
• Allow for Prepayments of Future Revenue Streams.
• Implement 7 Year Statute of Limitations for MMS' Processes.
• Process All Appeals Within 33 months.

We believe that contacts with both State government agencies and the oil and gas industry are critical to gaining information, views, ideas and approaches that will facilitate MMS moving forward with implementation plans.

Also, we believe that such contacts are important for keeping our affected constituencies informed on the status of implementation efforts.

We believe our implementation strategy should be flexible and provide for a range of outreach approaches. For example, topics such as how to best establish the identity of designees and operating rights owners may be appropriate for Customer Feedback Sessions to obtain customer input during the evaluation of possible implementation alternatives. Other topics such as how to implement the provisions for marginal properties as well as the implementation of FOGRMA Section 205 amendments (state delegations) are likely candidates for a workshop approach to facilitate extensive and ongoing dialog. Development of the major implementing regulations required by RSFA will also require extensive outreach with State government agencies and industry using this strategy.

MMS has invited representatives from State and industry organizations to participate in the more structured discussion. Organizational representatives and the MMS contact are listed in the **FURTHER INFORMATION** section. Please direct your questions and comments to the representatives.

In complying with the Small Business Regulatory Enforcement Fairness Act of 1996, we are also soliciting comments from small entities as to the impact revised reporting requirements and regulations resulting from RSFA will have on their operations. In preparing rules required by RSFA, we will also work to comply with new requirements of other recently passed laws and Executive Orders affecting regulatory development.

Customer Feedback Sessions

MMS met with a working group of representatives from State government agencies and industry organizations in an initial outreach planning meeting in October 1996.

The next phase of our outreach strategy centers around a series of feedback sessions designed to present and discuss specific actions taken and planned to implement one or more of the previously listed key RSFA issues.

We feel that we can best work with our stakeholders on an issue-by-issue basis to implement the requirements of RSFA. At these sessions MMS would describe work to date including any decisions reached which should, because of the timing, be communicated to stakeholders.

As we schedule issue-specific meetings, we will notify members of the working group that met in October. Each member of the working group will then make sure those stakeholders whom they represent are appropriately represented at the scheduled meetings. The objectives and expected benefits of these meetings include a forum to gain an understanding of the various positions of the stakeholders regarding the issues presented. Periodically, we will meet with the entire working group to discuss overall progress in implementing all issues related to RSFA.

Workshop Strategy

The workshop strategy is intended to focus on selected aspects of RSFA where MMS believes that State government agencies and industry positions should be fully developed and evaluated before MMS selects its implementation approach.

This approach will rely primarily on workshops to be held in Denver, Colorado. Other locations such as Houston may be appropriate for selected workshops. The topics will be developed in consultation with industry trade groups and State government agencies. MMS will determine the final list of topics and the agenda for each workshop.

Payor and Operator Training Sessions

These sessions which take place several times a year provide opportunities for exchange of information and ideas on new initiatives currently underway. Industry representatives at these sessions can attend with the expectation of some level of discussion on the RSFA issues. Questions can be raised and discussed.

Day to Day Contacts

Within three of RMP's divisions, employees and contractor personnel have day to day contacts with industry representatives. Questions can be asked daily by many payors and operators reporting to RMP.

Other Sessions

Many other sessions that involve industry and State government agencies will take place over the next few months which are not specifically organized to deal with RSFA or its implementation, but which will nevertheless require a level of understanding of RSFA for attendees. Sessions for discussing electronic reporting will take place and our representative can be asked to discuss the implications of RSFA as it relate to electronic reporting. Clearly, industry will require as much lead time as RMP to properly prepare for future changes to reporting requirements.

In order to accomplish a broad based fact finding on how the requirements of RSFA affect our customers and stakeholders, comments from the public are encouraged on any issue related to implementing RSFA. In addition to attendance at the previously described sessions and workshops comments can be made in writing and be sent directly to MMS using instructions in the ADDRESSES part of this notice.

Date: October 22, 1996.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 96–27758 Filed 10–29–96; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN65–1–7288b; FRL–5613–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Indiana State Implementation Plan (SIP) submitted on November 21, 1995, and February 14, 1996, establishing regulations for wood furniture coating operations in Clark, Floyd, Lake, and Porter Counties, as part of Clark and Floyd Counties' 15 percent

(%) Reasonable Further Progress control measures for Volatile Organic Compound emission, and the State's requirement to develop post-1990 Control Techniques Guidelines (CTG) Reasonably Available Control Technology (RACT) rules for the 4 counties. These regulations require wood furniture coating facilities which have the potential to emit at least 25 tons of VOC per year to use coatings which meet a certain VOC content limit or add on controls that are capable of achieving an equivalent reduction. In the final rules section of this Federal Register, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before November 29, 1996.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and EPA's analysis of it are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco Acevedo, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: September 5, 1996.

William E. Muno,

Acting Regional Administrator.

[FR Doc. 96–27608 Filed 10–29–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR PART 52

[LA–37–1–7320b, TX—75–1–7319b; FRL–5629–8]

Approval and Promulgation of Air Quality Plans, Texas and Louisiana; Revision to the Texas and Louisiana State Implementation Plans Regarding Negative Declarations for Source Categories Subject to Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 172(c)(1) of the Clean Air Act (the Act) requires nonattainment areas to reduce emissions from existing sources by adopting, at a minimum, reasonably available control technology (RACT). The EPA has established 13 such source categories for which RACT must be implemented and issued associated Control Technique Guidelines (CTGs) or Alternate Control Techniques (ACTs). If no major sources of volatile organic compound (VOC) emissions for a source category in a nonattainment area exist, a State may submit a negative declaration for that category. Louisiana has submitted negative declarations for certain source categories in the Baton Rouge ozone nonattainment area. Texas has submitted negative declarations for certain source categories in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. Their declarations include the following CTG source categories: offset lithography, plastic parts-business machines, plastic parts-others, wood furniture, aerospace coatings, autobody refinishing, shipbuilding and repair, industrial wastewater, and clean up solvents. The EPA proposes to approve these negative declarations for Louisiana and Texas.

DATES: Comments on this proposed rule must be postmarked by November 29, 1996.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's submittal and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733

Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Blvd., Baton Rouge, LA 70810

Texas Natural Resource Conservation Commission (TNRCC), Office of Air Quality, 12124 Park 35 Circle, Austin, TX 78753.

Anyone wishing to review this submittal at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the Rules Section of this Federal Register.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental regulations, Ozone, Reporting and recordkeeping, and Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 30, 1996.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 96–27605 Filed 10–29–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[RI–12–6969b; FRL–5608–2]

Approval and Promulgation of Implementation Plans; Limited Approval and Limited Disapproval of Implementation Plans; Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing action on State Implementation Plan (SIP) revisions submitted by the State of Rhode Island. The EPA is proposing approval of Rhode Island's 1990 base year ozone emission inventory, two control measures contained within the Rhode Island contingency plan, and establishment of a Photochemical Assessment Monitoring Stations (PAMS) network, as revisions to the Rhode Island SIP for ozone because these submittals meet the EPA's approval criteria that are relevant for these programs. The EPA proposes a

limited approval and limited disapproval of SIP revisions submitted by the State of Rhode Island to meet the 15 Percent Rate of Progress (ROP) Plan and contingency measure requirements of the Clean Air Act (CAA) primarily because the submittals contain control measures that are likely to achieve some, but not all of the emission reductions required of such submittals.

In the final rules section of today's Federal Register, the EPA is approving the Rhode Island 1990 base year inventory, VOC control measures pertaining to Consumer and Commercial Products, and Architectural and Industrial Maintenance (AIM) coatings, and the establishment of a PAMS network as a direct final rule without prior proposal, because the Agency views these as noncontroversial revision amendments and anticipates no adverse comments. A detailed rationale for each approval is set forth in the direct final rule. The EPA is not publishing a direct final rule for the limited approvals and limited disapprovals of the 15 percent ROP and contingency plans. If no adverse comments are received on this direct final rule, no further activity is contemplated in relation to this proposed rule for these revisions. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Public comments on this document are requested and will be considered before taking final action on this SIP revision. Comments on this proposed action must be post marked by November 29, 1996.

ADDRESSES: Written comments on this action should be addressed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts, 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Region I office, and at the Rhode Island Department of Environmental Management, Division of Air Resources, 291 Promenade Street, Providence, Rhode Island, 02908–5767. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, Air Quality Planning Unit, EPA Region I, JFK Federal Building, Boston, Massachusetts, 02203; telephone (617) 565–9266.

SUPPLEMENTARY INFORMATION: For supplementary information regarding the Rhode Island 1990 base year emission inventory, consumer and commercial products rule, AIM rule, and establishment of a PAMS network, see the information provided in the direct final action of the same title which is located in the rules section of the Federal Register.

Background

Section 182(b)(1) of the CAA as amended in 1990 requires ozone nonattainment areas with classifications of moderate and above to develop plans to reduce area-wide VOC emissions by 15 percent from a 1990 baseline. The plans were to be submitted by November 15, 1993 and the reductions were required to be achieved within 6 years of enactment or November 15, 1996. The Clean Air Act also sets limitations on the creditability of certain types of reductions. Specifically, States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (new car emissions standards) promulgated prior to 1990 or for reductions resulting from requirements to lower the Reid Vapor Pressure (RVP) of gasoline promulgated prior to 1990. Furthermore, the CAA does not allow credit for corrections to Vehicle Inspection and Maintenance Programs (I/M) or corrections to Reasonably Available Control Technology (RACT) rules (so called ''RACT fix-ups) as these programs were required prior to 1990.

In addition, sections 172(c)(9) and 182(c)(9) of the CAA require that contingency measures be included in the plan revision to be implemented if the area misses an ozone SIP milestone, or fails to attain the standard by the date required by the CAA.

The entire state of Rhode Island is classified as a serious ozone nonattainment area, and is therefore subject to the 15 Percent ROP requirements. The area is referred to as the Providence ozone nonattainment area. Rhode Island submitted a final 15 percent ROP plan to EPA on May 23, 1994. The plan contained adopted rules for all of the VOC control measures identified within the plan except for the enhanced vehicle inspection and maintenance (I&M) program. The EPA deemed the Rhode Island 15 percent plan incomplete by letter dated May 17, 1994, due to the lack of an adopted rule for the I&M program. Rhode Island submitted an adopted rule for an enhanced I&M program to the EPA on November 18 and December 28, 1994. By letter dated January 18, 1995, EPA notified Rhode Island that the enhanced I&M submittal had been deemed complete. Additionally, the letter stated that the submittal of the enhanced I&M program allowed EPA to deem the Rhode Island 15 percent plan complete, thereby stopping a sanctions clock which had been started on January 12, 1994 due to the lack of a complete 15 percent plan from the state.

The EPA has analyzed Rhode Island's submittal and believes that the proposed 15 Percent Plan and Contingency Plan can be given limited approval because they would strengthen the SIP by achieving reductions in VOC emissions. These plans do not, however, achieve the total required percentage of reductions. Therefore, the EPA is proposing a limited disapproval of the plans. For a complete discussion of EPA's analysis of the Rhode Island 15 Percent ROP plan and Contingency Plan, please refer to the Technical Support Document for this action which is available as part of the docket supporting this action. A summary of the EPA's findings follows.

Emission Inventory

The base from which States determine the required reductions in the 15 Percent Plan is the 1990 emission inventory. The EPA is approving the Rhode Island 1990 emission inventory with a direct final action in the rules section of today's Federal Register. The inventory approved by the EPA exactly matches the one used in the 15 Percent ROP plan calculations.

Calculation of Target Level Emissions

Rhode Island subtracted the non-creditable reductions from the FMVCP from the 1990 inventory, and accurately adjusted the inventory to account for the RVP of gasoline sold in the state in 1990. These modifications result in the 1990 adjusted inventory. The total emission reduction required to meet the 15 Percent ROP Plan requirements equals the sum of the following items: 15 percent of the adjusted inventory, reductions that occur from noncreditable programs such as the FMVCP and RVP programs as required prior to 1990, reductions needed to offset any growth in emissions that takes place between 1990 and 1996, and reductions that result from corrections to the I/M or VOC RACT rules. Table 1 summarizes these calculations for the Providence serious ozone nonattainment area.

TABLE 1.—CALCULATION OF REQUIRED REDUCTIONS (TONS/DAY)

1990 Anthropogenic Emission Inventory	184.1
1990 Adjusted Inventory	168.4
15% of Adjusted Inventory	25.3
Non-creditable Reductions	15.7
1996 Target	143.1
1996[1] Projected, Uncontrolled Emissions	181.7
Required Reduction[2]	38.6

[1] 1996 emissions for on-road mobile sources were calculated using an emission factor that reflected the level of control achieved by the FMVCP in 1996.

[2] Required Reductions were obtained by subtracting 1996 target from the 1996 projected uncontrolled inventory.

Measures Achieving the Projected Reductions

Rhode Island has provided a plan to achieve the reductions required for the Providence serious ozone nonattainment area. The following is a concise description of each control measure Rhode Island used to achieve emission reduction credit within its 15 percent ROP plan. The EPA has previously approved all of the following control measures with the exception of the enhanced vehicle I/M program, and agrees with the emission reductions projected in the State submittals except where noted in Table 2 under the heading ‘‘Noncreditable Reductions.’’

A. Point Source Controls

Rhode Island projects that a total of 9.11 tons per summer day (tpsd) in emission reductions will occur from the following point source categories:

Surface Coating

Section 182(b)(2)(B) of the CAA requires that moderate and above ozone nonattainment areas adopt rules to require RACT for all VOC sources in the area covered by any *Control Technique Guideline* (CTG) issued before the date of the enactment of the Clean Air Act amendments of 1990. Rhode Island imposed new RACT controls on facilities involved in the following surface coating processes to meet this requirement (these controls are referred to as ‘‘RACT Catch-ups’’):

* Surface Coating of Coils
* Surface Coating of Metal Furniture
* Surface Coating of Magnet Wire
* Surface Coating of Large Appliances
* Surface Coating of Miscellaneous Metal Parts
* Surface Coating of Flat Wood Paneling
* Surface Coating of Wood Products

Rhode Island Air Pollution Control Regulation Number 19, ‘‘Control of Volatile Organic Compounds from Surface Coating Operations,’’ covering all of the above named emission source categories was submitted to EPA on November 11, 1992, and approved by EPA as part of the RI SIP in a Federal Register notice published on October 18, 1994 (59 FR 52427). Emission reductions from these rules are creditable toward the ROP requirement. The EPA agrees with the reductions projected in the Rhode Island 15 Percent ROP plan due to these RACT catch up rules (1.39 tpsd).

Printing

Rhode Island lowered the applicability threshold within Air Pollution Control Regulation Number 21, ‘‘Control of Volatile Organic Compound Emissions from Printing Operations,’’ which led to VOC control requirements at additional facilities in the state. The revised Rhode Island printing rule was submitted to EPA on January 25, 1993, and approved as part of the Rhode Island SIP within a Federal Register notice dated July 7, 1995 (60 FR 35361). The EPA agrees with the reductions projected in the Rhode Island 15 Percent ROP plan due to the applicability change to this rule, (0.66 tpsd).

Non-CTG Sources

Rhode Island Air Pollution Control Regulation Number 15, entitled ‘‘Control of Organic Solvent Emissions,’’ requires that major sources (facilities with the potential to emit greater than 50 tons per year of VOC) that are not covered by an existing CTG must reduce their emissions. The state submitted this RACT rule to EPA on January 12, 1993. The rule was proposed for approval as part of the RI SIP in a Federal Register notice dated July 7, 1995 (60 FR 35361). The EPA agrees with the majority of the emission reductions projected in the Rhode Island 15 Percent ROP plan due to the rule, with one exception. Discussions with staff at the Rhode Island Department of Environmental Management (RI–DEM) indicate that the emission reductions projected from one source are not going to occur because the source never exceeded the 50 tpy threshold. The source will not be required to comply with this rule, and the 0.21 tpsd reduction that RI–DEM had projected will not occur.

Although Rhode Island has submitted an adopted non-CTG RACT rule to EPA, and this rule has been proposed for approval by EPA into the Rhode Island SIP, the single source non-CTG RACT determinations for the sources that Rhode Island has claimed emission reduction credit for in its 15 percent SIP have not been submitted. EPA cannot fully approve Rhode Island's 15 percent SIP until all of the non-CTG RACT determinations that the state is relying upon as part of the 15 percent VOC emission reduction plan are submitted to the EPA and approved as single source sip revisions. Accordingly, the emission reductions claimed by Rhode Island from this rule (1.30 tpsd) are currently not creditable towards the 15 percent ROP requirement.

Air Toxic Sources

Rhode Island projects that a small amount of VOC emission reductions will occur due to the impact of its Air Pollution Control Regulation Number 22, ‘‘Air Toxics,’’ at several facilities in the state. Rhode Island has adopted an air toxics rule, but has not submitted this rule to the EPA for approval under section 112(l) as a federally enforceable toxics requirement. Section 182(b)(1)(C) requires creditable reductions to be in the State's implementation plan, EPA rules, or Title V permits. The RI–DEM's Air Toxics rule is none of these, so the reductions RI–DEM is claiming (0.17 tpsd) are currently not creditable toward the 15 percent ROP requirement.

Marine Vessel Loading

Rhode Island has adopted a VOC control regulation for the loading of marine vessels with petroleum. The state submitted an adopted Marine Vessel Loading rule to EPA on March 15, 1994. On April 4, 1996, the EPA published a direct final rulemaking (61 FR 14975) approving the rule as a revision to the Rhode Island SIP. The EPA agrees with the reductions projected in the Rhode Island 15 Percent ROP plan due to the implementation of this rule (4.79 tpsd).

Plant Closures

Rhode Island's 15 percent plan identifies facilities that will cease operations between 1990 and 1996. The state has used the emission reductions generated from these plant closures as part of its 15 percent ROP plan. The state is aware that the emission reductions from these facilities cannot be used for other purposes, such as to meet the emissions offset provisions of the new source review program, or as a source of a tradeable emission commodity.

There is a minor discrepancy in the amount of emission reductions projected from plant closures within the State's 15 percent ROP plan. The Appendix C spreadsheet that lists the facilities in the State from which emission reductions are expected by 1996 indicates that 0.79 tpsd in reductions will occur due to plant shutdowns, yet page 9 of the State's plan claims 0.84 tpsd in reductions. The EPA is approving the value of 0.79 tpsd in emission reductions projected in Appendix C of the Rhode Island 15 Percent ROP plan.

B. Area Source Controls

Cutback Asphalt

Rhode Island has adopted and submitted to the EPA Air Pollution Control Regulation Number 25, entitled ‘‘Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt,’’ which requires the use of emulsified asphalt instead of cutback asphalt for most applications. This rule was approved by the EPA as part of the Rhode Island SIP in a Federal Register notice dated October 18, 1994 (59 FR 52427). The EPA agrees with the reductions projected in the Rhode Island 15 Percent ROP plan due to the implementation of this rule (2.57 tpsd).

Automobile Refinishing

Rhode Island has adopted and submitted to the EPA Air Pollution Control Regulation Number 30, entitled ‘‘Control of Volatile Organic Compounds from Automobile Refinishing Operations,’’ that will limit VOC emissions from this source category by regulating the VOC content of automotive refinishing products and by requiring the use of applicators that achieve at least a 65% transfer efficiency. Additionally, spray gun cleaning and solvent storage requirements will limit VOC emissions from automobile refinishing operations. On February 2, 1996, EPA published a direct final rulemaking (61 FR 3824) approving the rule as a revision to the Rhode Island SIP.

The EPA intends to promulgate a national rule that will limit the VOC content of automobile refinishing coatings. The RI–DEM’s rule achieves at least as much emission reduction as the EPA’s proposed rule. The RI–DEM’s rule has additional requirements beyond those found in the EPA’s draft rule that justify RI–DEM’s higher reduction projection. The EPA believes that the State rule will result in the emission reduction levels projected in Rhode Island’s 15 percent ROP plan from this source category (2.97 tpsd).

Stage II

Rhode Island has adopted and submitted to the EPA Air Pollution Control Regulation number 11, ‘‘Petroleum Liquids Marketing and Storage,’’ that will limit VOC emissions from automobile refueling activity. The rule was approved as a revision to the Rhode Island SIP within a Federal Register notice published on December 17, 1993 (58 FR 65930). The EPA agrees with the emission reduction credit claimed by the state due to the implementation of this program, (3.30 tpsd).

C. On-Road Mobile Source Controls

Vehicle Inspection and Maintenance

The 15 percent ROP plan relied on an enhanced vehicle I/M program that was developed by the State of Rhode Island and submitted to EPA on November 18, 1994 and December 28, 1994. EPA evaluated these submittals and made a completeness finding on January 18, 1995. Rhode Island has calculated a reduction of 14.93 tpsd from their enhanced I/M program. In light of the recent I/M flexibility and policy issued by EPA, Rhode Island has indicated an interest in re-evaluating their enhanced I/M program to take advantage of the I/M flexibility. However, at this point Rhode Island has not implemented their enhanced I/M program as submitted in its I/M SIP submittal, nor has the State submitted a revised enhanced I/M SIP. Since the State has not implemented its current enhanced I/M program, and the State has failed to develop a substitute enhanced I/M program, the EPA has no basis for crediting the emission reductions that the RI–DEM projected to result from its enhanced I/M program. Thus, the reductions for this portion of the plan cannot be approved (14.93 tpsd).

Reformulated Gasoline (RFG)

Section 211(k) of the Clean Air Act requires that after January 1, 1995 in severe and above ozone nonattainment areas, only reformulated gasoline be sold or dispensed. This gasoline is reformulated to burn cleaner and produce fewer evaporative emissions. The state of Rhode Island is a ‘‘serious’’ ozone nonattainment area and therefore is not required to sell reformulated fuels. On March 14, 1991 the State submitted a letter from the Governor requesting that Rhode Island participate in the reformulated fuels program. This request was published in the Federal Register on August 13, 1991, 56 FR 38434. The EPA agrees with the emission reduction calculated by the state due to the sale of reformulated gasoline (5.71 tpsd).

Tier I Federal Motor Vehicle Control Program (FMVCP)

The EPA promulgated standards for 1994 and later model year light-duty vehicles and light-duty trucks (56 FR 25724 (June 5, 1991)). Since the standards were adopted after the CAA amendments of 1990, the resulting emission reductions are creditable toward the 15 percent reduction goal. The EPA agrees with the emission reductions calculated by Rhode Island due to the FMVCP, (0.20 tpsd).

D. Non-Road Mobile Source Controls

As previously discussed, Rhode Island has opted in to the reformulated gasoline program. In addition to reducing VOC emissions from on-road motor vehicles, the sale of this gasoline will also reduce VOC emissions from non-road equipment. The EPA agrees with the emission reductions projected by Rhode Island to occur due to the sale of reformulated gasoline, 0.97 tpsd.

Table 2 summarizes the creditable and noncreditable Emission reductions contained within the Rhode Island 15 percent ROP plan.

TABLE 2.—Summary of Creditable and Noncreditable Emission Reductions: Providence, RI Ozone Nonattainment Area (Tons/day)

Required Reduction	38.6
Creditable Reductions:	
Surface Coating	1.39
Printing	0.66
Marine Vessel Loading	4.79
Plant Closures	0.79
Cutback Asphalt	2.57
Auto Refinishing	2.97
Stage II	3.30
Reform, On-road	5.71
Tier I	0.20
Reform, Off-road	0.97
Total	23.35
Noncreditable Reductions:	
Inspection & Maintenance	14.93
Non-CTG Sources	1.30
Air Toxics Sources	0.17
Plant Closures	0.05
Total noncreditable	16.45
Short fall	15.25

Contingency Measures

Ozone nonattainment areas classified as serious or above must submit to the EPA, pursuant to sections 172(c)(9) and 182(c)(9) of the CAA, contingency measures to be implemented if an area misses an ozone SIP milestone or does not attain the national ambient air quality standard by the applicable date. The General Preamble to Title I, (57 FR 13498 (April 16, 1992)) states that the contingency measures should, at a minimum, ensure that an appropriate level of emission reduction progress continues to be made if attainment or RFP is not achieved and additional planning by the State is needed. The EPA interprets this provision of the CAA to require States with moderate and above ozone nonattainment areas to submit sufficient contingency measures so that upon implementation of such measures, additional emission reductions of three percent of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved in the year after the failure has been identified (57 FR at 13511). States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review.

Analysis of Contingency Measures

Commercial and Consumer Products

Under section 183(e)(9) of the CAA, States may develop and submit to the Administrator a procedure under State law to regulate commercial and consumer products, provided they consult with the EPA regarding other State and local regulations for commercial and consumer product rules. Rhode Island has consulted the EPA and other States to utilize the collective expertise of other regulatory bodies in drafting and adopting their regulation. The rule applies to any person who sells, offers for sale, or manufactures commercial and consumer products in Rhode Island.

Commercial and Consumer products are defined to include products sold retail or wholesale and used by household, commercial, or institutional consumers. Rhode Island submitted an adopted commercial and consumer products rule to EPA on March 15, 1994. The rule contains standards for the VOC content of products in 12 categories. The rule contains an exemption for commercial and consumer products which have been granted an exemption to the California Air Resources Board (CARB) Consumer Products Regulation under the Innovative Products provisions of the CARB rule.

The EPA is approving the Rhode Island Commercial and Consumer Products rule in the rules section of the Federal Register because the rule will strengthen the SIP. EPA intends to promulgate a national rule for the regulation of consumer and commercial products under section 183 of the CAA in the near future. A comparison of Rhode Island's consumer and commercial products rule to the current version of the pending federal rule, however, indicates that Rhode Island has overestimated the control effectiveness of its rule.

A comparison of the products that will be covered by the pending national rule and Rhode Island's rule reveals that the national rule will cover more source categories. From this review, it was determined that Rhode Island's rule will only be 58.4% as effective in reducing emissions from the consumer products as the federal rule. The major reason is that Rhode Island's rule does not contain emission limits for auto windshield washer fluids or household adhesives. The emissions from these two categories are substantial, and the national rule will have emission limits for both categories.

The RI–DEM analyzed the effectiveness of its commercial products rule using projections STAPPA/ ALAPCO developed based on implementing California's Commercial products rule. The EPA believes that gaps in RI–DEM's rule are substantial enough that these projections are unreliable, and EPA is instead crediting Rhode Island with the reductions EPA anticipates from its rule, or 1.1 tpsd.

Architectural and Industrial Maintenance (AIM) Coatings

On March 15, 1994, Rhode Island submitted a rule regulating the VOC content of AIM coatings. The EPA is approving Rhode Island's AIM regulation within the rules section of the Federal Register because the rule will strengthen the SIP.

The EPA intends to promulgate a national rule for this emission source category. In a memo dated March 22, 1995, the EPA provided guidance on the expected reductions from the national rule. It is expected that emissions would be reduced by 20 percent. Although Rhode Island has adopted its own AIM rule, the state based its emission reduction projections on previous guidance from the EPA that indicated a 25 percent reduction would occur from the federal rule. The EPA has evaluated Rhode Island's AIM rule, and does not agree with the reductions projected in excess of 20 percent. Therefore, the EPA is discounting RI–DEM's projected 2.4 tpsd reduction by 0.5 tpsd, for a creditable reduction of 1.9 tpsd.

Surplus Emission Reduction From 15 Percent Plan

Rhode Island's contingency plan included 1.2 tpsd of emission reduction credits that were considered surplus reductions from the state's 15 percent ROP plan. The EPA cannot approve these emission reduction credits, because the lack of a motor vehicle inspection and maintenance program and the other deficiencies noted above have erased the surplus and created an emission reduction shortfall within the 15 percent ROP plan.

Table 3 summarizes the creditable and noncreditable emission reductions contained within the Rhode Island contingency plan.

TABLE 3.—SUMMARY OF CREDITABLE AND NONCREDITABLE CONTINGENCY MEASURE REDUCTIONS: PROVIDENCE, RHODE ISLAND (TONS/DAY)

Required Contingency	5.0
Creditable Contingency Reductions:	
Consumer Products	1.1
AIM Coatings	1.9
Total	3.0
Noncreditable Contingency Reductions:	
Consumer Products	0.8
AIM Coatings	0.5
Excess from 15 percent Plan	1.2
Total noncreditable	2.5
Short fall	2.0

Proposed Action

The EPA has evaluated these submittals for consistency with the CAA, EPA regulations, and EPA policy. The Rhode Island 15 Percent ROP plan will not achieve enough reductions to meet the 15 percent ROP requirements of section 182(b)(1) of the CAA. Additionally, the portion of the State's contingency plan consisting of the two VOC control regulations does not meet the requirements of section 172(c)(9) of the CAA. These regulations are triggered upon failure of the State to meet ROP requirements, but are not also triggered by failure of the State to attain the NAAQS for ozone by the area's attainment date as required by section 172(c)(9). In light of these deficiencies, the EPA cannot grant full approval of these plan revisions under Section 110(k)(3) and Part D. However, the EPA may grant a limited approval of the submitted plans under section 110(k)(3) and section 301(a) since the rules making up the 15 Percent Plan and the Contingency Plan will result in a certain percentage of VOC emission reductions. Thus, the EPA is proposing a limited approval of the Rhode Island 15 Percent Plan and Contingency Plan under sections 110(k)(3) and 301(a) of the CAA. The EPA is also proposing a limited disapproval of the Rhode Island 15 Percent plan under sections 110(k)(3) and 301(a) because the submittal does not fully meet the requirements of section 182(b)(1) of the CAA for the 15 Percent Rate of Progress Plans, and the plan does not achieve the required emission reductions. In addition, the EPA is proposing a limited disapproval of the Rhode Island Contingency plan.

The plan does not meet the requirements of sections 172(c)(9) and 182(c)(9) for contingency measures because the plan, if implemented, will not achieve the required 3 percent emission reduction. Additionally, the plan does not fully meet the requirements of section 172(c)(9) regarding implementation of contingency measures if the area's attainment date is not met according to the schedule outlined within the CAA.

Rhode Island has expressed its intention to submit a revised vehicle I/M program. The additional reductions from vehicle I/M may serve to correct the shortfall identified in this proposed Federal Register Action. Alternatively, Rhode Island could implement its existing I/M program. To gain full approval of its 15 percent plan, Rhode Island will need to submit a revised plan that documents the necessary enforceable reductions, such as those resulting from a revised I/M program and other enforceable measures identified above, to meet the 15 percent rate of progress requirements and include sufficient contingency measures to achieve a 3 percent reduction.

The EPA believes that approval of the contingency measures will strengthen the SIP. Therefore, within the rules section of today's Federal Register the EPA is approving the control measures in the Rhode Island Contingency Plan.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and the imposition of emission offset requirements. The 18-month period referred to in section 179(a) will begin on the effective date established in the final limited disapproval action. If the deficiency is not corrected within 6 months of the imposition of the first sanction, the second sanction will apply. This sanctions process is set forth at 59 FR 39832 (Aug. 4, 1994), to be codified at 40 CFR 52.31. Moreover, within two years of the final disapproval of a required SIP submission, the EPA shall promulgate a federal implementation plan (FIP) under section 110(c).

On January 18, 1995, the EPA made a completeness determination on the Rhode Island 15 percent plans with an approval of the established motor vehicle emission budget for use in transportation conformity determinations. Because the motor vehicle emission budget is based to a significant extent upon an I/M program not being implemented by Rhode Island, EPA has determined that budget can no longer satisfy the necessary emission reductions required. EPA, therefore, is proposing to rescind the protective finding[3] in its final disapproval action. EPA is notifying the State, the Metropolitan Planning Organizations, the U.S. Federal Highway Agency, and the U.S. Federal Transit Administration of the effect of a disapproval action on conformity in Rhode Island. The conformity status of the transportation plan and transportation improvement program shall lapse 120 days after EPA's final disapproval without a protective finding, and no new project-level conformity determinations may be made. Furthermore, no new transportation plan, TIP, or projects may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted, found complete and conformity to this submission is determined.

Nothing in this proposed rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this action from review under Executive Order l2866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *US EPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA's proposed limited disapproval of the State request under sections 110 and 301, and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this proposed limited disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's limited disapproval of the submittal does not impose any new Federal requirements. Therefore, the EPA certifies that this proposed limited disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements, nor does it impose any new Federal requirements.

C. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector; or to State, local, or tribal governments in the aggregate.

Through submission of these SIP revisions which have been proposed for limited approval in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 182 of the CAA. The rules and commitments

[3] *Protective finding* means a determination by EPA that the control strategy contained in a submitted control strategy implementation plan revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A).

given limited approval in this action may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being given limited approval by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector; the EPA's action will impose no new requirements. Such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, the EPA has determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: August 21, 1996.

John P. DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 96–27603 Filed 10–29–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AD–FRL–5641–9]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Pinal County Air Quality Control District, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: The EPA is proposing interim approval of the revised Operating Permits Program submitted by the Arizona Department of Environmental Quality (ADEQ) on behalf of the Pinal County Air Quality Control District (Pinal) for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources, and to certain other sources. The EPA's proposed interim approval is of specific revisions to the program originally submitted by ADEQ on Pinal's behalf on November 15, 1993 and supplemented on August 16, 1994 and August 15, 1995. The EPA proposed approval of the original program on July 13, 1995 and is taking final action elsewhere in today's Federal Register to finalize interim approval of that program.

Today's action proposes interim approval of specified portions of the Pinal County Code of Regulations amended on February 22, 1995, and submitted to EPA on August 15, 1995, that are relevant to implementation and enforcement of the Pinal County title V operating permits program. The specific provisions of Pinal's title V regulations adopted or revised on February 22, 1995 that are addressed by this proposed action are Sections 1–3–140(1a), 140(16a), 140(44), 140(56), 140(58e), 140(59), 140(66), 140(86), 140(89), and 140(146) of Article 3 of Chapter 1; Sections 3–1–042, 045(C), 050(C)(4), 050(G), 080(A), 081(A)(5)(b), 081(A)(6), 100(A), and 109 of Article 1 of Chapter 3; and Articles 5 and 7 of Chapter 3 of the Pinal County Code of Regulations (PCR).

In the final rules section of this Federal Register, EPA is promulgating interim approval of Pinal's revised title V program as a direct final rule without prior proposal because EPA views this submittal as noncontroversial and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rulemaking. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by November 29, 1996.

ADDRESSES: Written comments on this action should be addressed to: Regina Spindler, Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901

Copies of the District's submittal, EPA's Technical Support Document, and other supporting information used in developing the proposed approval are available for public inspection at EPA's Region IX office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Regina Spindler (telephone: (415) 744–1251), Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule under the following title located in the Rules section of this Federal Register: Clean Air Act Final Interim Approval Of Operating Permits Program; Arizona Department of Environmental Quality, Maricopa County Environmental Services Department, Pima County Department of Environmental Quality, Pinal County Air Quality Control District, Arizona. Clean Air Act Direct Final Interim Approval of Operating Permits Program; Pinal County Air Quality Control District, Arizona.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 18, 1996.

John Wise,

Acting Regional Administrator.

[FR Doc. 96–27835 Filed 10–29–96; 8:45 am]

BILLING CODE 6560–50–W

Notices

Federal Register

Vol. 61, No. 211

Wednesday, October 30, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Procurement and Property Management

Proposed Collection; Comment Request Concerning Procurement: Preparation of Technical and Business Proposals

AGENCY: Procurement and Property Management, USDA.

ACTION: Notice and request for comments regarding a proposed revision to and extension of an approved information collection requirement.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), Procurement and Property Management (PPM) intends to submit to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection related to performance under contracts for research, development, or advisory and assistance services. PPM invites comment on this information collection. This information requirement is currently approved by OMB for use through November 30, 1996. PPM proposes that OMB extend its approval for use through November 30, 1999.

DATES: Comments on this notice must be received by December 30, 1996.

ADDRESSES: Send comments to: Joseph J. Daragan, Procurement Analyst, Procurement and Property Management, STOP 9303, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–9303. Comments may also be submitted via fax at (202) 720–8972, or through the Internet at JDARAGAN@USDA.GOV.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, Procurement and Property Management, STOP 9303, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–9303, (202) 720–5729.

SUPPLEMENTARY INFORMATION:

Title: Procurement: Preparation of Technical and Business Proposals.

Background: The Agriculture Acquisition Regulation (AGAR) currently prescribes a solicitation provision standardizing the arrangement and format of technical and business proposals that are submitted by offerors who elect to respond to the agency's request for proposals. Information collection pursuant to this provision has been approved by the Office of Management and Budget (OMB) and assigned OMB Control Number 0505–0013. The AGAR also prescribes a solicitation provision for collection of financial and organizational information. Information collection pursuant to this provision has also been approved by OMB and assigned OMB Control Number 0505–0010. These provisions have been consolidated and streamlined in the proposed revision to the AGAR. To reflect this consolidation, USDA wishes to combine both information collection requests into a single request for approval and extension of an information collection. As revised, the request would cover collection of all cost, technical, and business information needed by USDA contracting offices to evaluate offers, to the extent collection of such information is not required by the Federal Acquisition Regulation.

OMB Number: 0505–0013. The proposed revision would incorporate an information collection approved as OMB Number 0505–0010 into this collection.

Expiration Date: Both OMB Number 0505–0010 and OMB Number 0505–0013 expire on 11/30/96.

Type of request: Revision to, and extension of, a currently approved collection.

Proposed use of information: Technical and business proposals received from offerors, including information about offerors' organization and financial systems, are used when conducting negotiated procurement to evaluate and determine the feasibility of the prospective contractor's technical approach, management, and cost/price to accomplish the task and/or provide the supplies or services required under a resultant contract.

Respondents: State or local governments; businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 3,200.

Estimated Number of Responses per Respondent: One (1).

Estimate of Burden: Public reporting burden to prepare technical and business proposals as part of a response to a solicitation is estimated to average 35 hours per response. This estimate does not include burden associated with providing information required in accordance with information collections prescribed by the Federal Acquisition Regulation. Only businesses submitting offers in response to a solicitation are affected by this collection.

Estimated Total Annual Burden on Respondents: 112,000 hours.

Comments received will be considered in order to: (a) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of USDA contracting offices, including whether the information will have a practical utility; (b) evaluate the accuracy of PPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

W. R. Ashworth,

Director, Procurement and Property Management.

[FR Doc. 96–27821 Filed 10–29–96; 8:45 am]

BILLING CODE 3410–98–P

Proposed Collection; Comment Request Concerning Collection of Acquisition Information

AGENCY: Procurement and Property Management, USDA.

ACTION: Notice and request for comments regarding a proposed extension of approved information collection requirements.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44

U.S.C. Chapter 35), Procurement and Property Management (PPM) intends to submit to the Office of Management and Budget (OMB) a request to review and approve an extension of four currently approved information collections related to the award of, or performance under, USDA contracts. PPM invites comment on these information collections. These information requirements are currently approved by OMB for use through November 30, 1996. PPM proposes that OMB extend its approval for use through November 30, 1999.

DATES: Comments on this notice must be received by December 30, 1996.

ADDRESSES: Send comments to: Joseph J. Daragan, Procurement Analyst, Procurement and Property Management, STOP 9303, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–9303. Comments may also be submitted via fax at (202) 720–8972, or through the Internet at JDARAGAN@USDA.GOV.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, Procurement and Property Management, STOP 9303, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–9303, (202) 720–5729.

SUPPLEMENTARY INFORMATION: USDA is seeking OMB approval of the following information collections:

1. *Title:* Procurement: Maximum Workweek—Construction Schedule.

OMB Number: 0505–0011.

Expiration Date: 11/30/96.

Type of request: Extension of a currently approved collection.

Proposed use of information: Information about the contractor's proposed hours of work is requested prior to the start of construction so that the agency can determine when on-site representatives are needed. A contracting office will insert this clause in a construction contract when, because of the agency's staffing or budgetary constraints, it is necessary to limit the contractor's performance to a maximum number of hours per week.

Respondents: Businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 600.

Estimated Number of Responses per Respondent: One (1).

Estimate of Burden: The information collected is the hours and days of the week the contractor proposes to carry out construction, with starting and stopping times. Public reporting burden for this collection of information is estimated to average fifteen minutes per response.

Estimated Total Annual Burden on Respondents: 150 hours.

2. *Title: Procurement:* Brand Name or Equal Clause.

OMB Number: 0505–0014.

Expiration Date: 11/30/96.

Type of request: Extension of a currently approved collection.

Proposed use of information: The Agriculture Acquisition Regulation permits the use of ''brand name or equal'' purchase descriptions to procure commercial products. Such descriptions require the offeror on a supply procurement to identify the ''equal'' item being offered and to indicate how that item meets salient characteristics stated in the purchase description. The contracting officer can determine from the descriptive information furnished whether the offered ''equal'' item meets the salient characteristics of the Government's requirements. The use of brand name or equal descriptions eliminates the need for bidders or offerors to read and interpret detailed specifications or purchase descriptions.

Respondents: Businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 74,835.

Estimated Number of Responses per Respondent: One (1).

Estimate of Burden: This information collection is limited to solicitations for products for which other methods of product specification are impracticable. Only businesses wishing to submit bids or offers in response to a solicitation are affected. Public reporting burden for this collection of information is estimate to average one tenth of an hour per response.

Estimated Total Annual Burden on Respondents: 7,484 hours.

3. *Title:* Procurement: Key Personnel Clause.

OMB Number: 0505–0015.

Expiration Date: 11/30/96.

Type of request: Extension of a currently approved collection.

Proposed use of information: The information enables the agency to determine whether the departure of a key person from the contractor's staff may have a deleterious effect upon contract performance, and to determine what accommodations or remedies may be taken. If the agency could not obtain information about departing key personnel, it could not ensure that qualified personnel continue to perform contract work.

Respondents: State or local governments; businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 200.

Estimated Number of Responses per Respondent: One (1).

Estimate of Burden: The information collection is required only when a contractor proposes to make changes to key personnel assigned to performance of a contract. Consequently, information collection is occasional. Public reporting burden for this collection of information is estimated to average one hour per respondent.

Estimated Total Annual Burden on Respondents: 200 hours.

4. *Title:* Procurement: Progress Reporting Clause.

OMB Number: 0505–0016.

Expiration Date: 11/30/96.

Type of request: Extension of a currently approved collection.

Proposed use of information: The information is requested monthly or quarterly from contractors performing research and development (R&D) or advisory and assistance services, including ADP system or software development. The information enables the contracting office to monitor actual progress and expenditures compared to anticipated performance and proposal representations upon which the contract award was made. The information alerts the contracting office to technical problems, to a need for additional staff resources or funding, and to the probability of timely completion within the contract cost or price. If the contracting office could not obtain a report of progress, it would have to physically monitor the contractor's operations on a day-to-day basis throughout the performance period.

Respondents: State or local government; businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 200.

Estimated Number of Responses per Respondent: The frequency of progress reports varies from monthly to quarterly depending on the complexity of the contract and the risk of successful completion. Based on monthly reporting, each respondent would submit 12 responses per year.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one and one half hours per respondent.

Estimated Total Annual Burden on Respondents: 3,600 hours.

Comments received will be considered in order to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of USDA contracting offices, including whether the information will have a practical utility; (b) evaluate the accuracy of

PPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

W. R. Ashworth,

Director, Procurement and Property Management.

[FR Doc. 96–27822 Filed 10–29–96; 8:45 am]

BILLING CODE 3410–98–P

Submission for OMB Review; Comment Request

October 25, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Officer, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

Food and Consumer Service

Title: 7 CFR Part 225, Summer Food Service Program

Summary: The Summer Food Service Program provides assistance to states to initiate and maintain nonprofit food service programs for needy children during the summer months and at other approved times. The information reported and maintained includes records the sponsors, camps, and the administering agencies must collect.

Need and Use of the Information: Records maintained by the sponsors and camps support payment for meals served and account for all costs incurred by these groups.

Description of Respondents: Individuals or households; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 79,350.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Weekly; Monthly; Quarterly.

Total Burden Hours: 301,404.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 96–27823 Filed 10–29–96; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Privacy Act; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of New Privacy Act System of Records.

SUMMARY: Notice is hereby given that USDA proposes to create two new Privacy Act systems of records, USDA/NAD–1, entitled ''Participant Appeals, USDA/NAD'' and USDA/NAD–2, entitled ''National Appeals Division Tracking System (Automated), USDA/NAD''.

EFFECTIVE DATE: This notice will be adopted without further publication in the Federal Register on December 30, 1996, unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the ''routine uses'' of the system be published for comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Norman G. Cooper, Director, NAD, USDA, 3101 Park Center Drive, Suite 1020, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is creating two new systems of records to be maintained by the National Appeals Division (NAD). The purpose of this notice is to announce the creation and character of the two systems of records maintained by NAD. The first system contains data on appeals, including materials maintained and submitted by a USDA agency related to an adverse decision, any information, correspondence, or documentation submitted by an appellant or a USDA agency during the appeals process and any statements of witnesses, tape recordings, or written transcripts of the hearings. The second system is an automated tracking system which contains assigned NAD log number, the appellant's name, race, social security number, address, and telephone number, program identifier, decision maker information, decision date, hearing officer and review officer identification, and hearing and review information.

A ''Report on New System,'' required by 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, was sent to the Chairman, Senate Committee on Governmental Affairs, the Chairman, House Committee on Government Reform and Oversight, and to the Administrator, Office of Information and Regulatory Affairs, of the Office of Management and Budget on October 23, 1996.

Signed at Washington, DC, on October 23, 1996.

Dan Glickman,

Secretary of Agriculture.

USDA/NAD–1

System name: Participant Appeals, USDA/National Appeals Division (NAD).

System Location: Natonal Appeals Division, Regional Offices: Eastern Regional Office, 3500 DePauw Boulevard, Suite 2052, Indianapolis, Indiana 46268; Southern Regional Office, 7777 Walnut Grove Road, LLB-1, Memphis, Tennessee 38120; and Western Regional Office, 730 Simms, Suite 386, Golden, Colorado 80490–4798.

Categories of individuals covered by the system: Program participants who file an appeal because of a covered adverse decision by a covered agency: Farm Service Agency, the Natural Resources Conservation Service, Rural Development, Rural Utilities Service, Rural Housing Service, Rural Business-Cooperative Service, or a state, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 5901(b)(5)).

Categories of records in the system: The system consists of complete files on appeals, including materials maintained and submitted by an agency related to an adverse decision; any information, correspondence, or documentation submitted by an appellant or the agency during the appeals process; and any statements of witnesses, tape recordings, or written transcripts of the hearings. Unless specifically requested, a written transcript is not normally prepared.

Authority for maintenance of the system: 7 U.S.C. 6991, *et seq*.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: USDA will refer records in this system: (1) To the appropriate agency, whether Federal State, local; or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by rule, regulation, or order issued pursuant thereto; (2) to a court, magistrate, or administrative tribunal, or to opposing counsel, in a proceeding before any of the above, for purposes of filing the official administrative record on discovery, which are relevant to the subject of the proceeding; and (3) to a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Records are maintained in file folders.

Retrievability: Records can be accessed by individual name, NAD log number, and State.

Safeguards: Records are kept in offices attended by authorized personnel.

Retention and disposal: Maintained 6 years after the case is closed.

System manager(s) and address: Director, NAD, USDA, 3101 Park Center Drive, Suite 1020, Alexandria, Virginia 22302, telephone number (703) 305–1151.

Notification procedure: An individual may request information as to whether the system contains records pertaining to him or her from Director, NAD, USDA, 3101 Part Center Drive, Suite 1020, Alexandria, Virginia 22302, telephone number (703) 305–1151. A request for information pertaining to an individual should contain full name, address, and zip code.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him or her by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as notification procedure. (The regulations for contesting contents of records and appealing initial determinations are set forth at 7 CFR 1.110–1.123.)

Record source categories: Records in this system come primarily from appellants, witnesses, and agency personnel.

Systems exempted from certain provisions of the act: None.

USDA/NAD–2

System name: National Appeals Division Tracking System (Automated), USDA/National Appeals Division (NAD).

System location: Management Field Office, USDA, 8930 Ward Parkway, Kansas City, Missouri 64114.

Categories of individuals covered by the system: Program participants who file an appeal because of a covered adverse decision by a covered agency: Farm Service Agency, the Natural Resources Conservation Service, Rural Development, Rural Utilities Service, Rural Housing Service, Rural Business-Cooperative Service, or a state, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 5901(b)(5)).

Categories of records in the system: The system contains assigned NAD log number, Appellant's name, race, social security number, address, and telephone number, program identifier, decision maker information, decision date, hearing officer and review officer identification, and hearing and review information.

Authority for maintenance of the system: 7 U.S.C. 6991 *et seq.*

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: USDA will refer records in this system: (1) To the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or by rule, regulation, or order issued pursuant thereto; (2) to a court, magistrate, or administrative tribunal, or to opposing counsel, in a proceeding before any of the above, which are sought in the course of discovery and which are relevant to the subject matter of the proceedings; and (3) to a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: National Computer Center, Kansas City Security Staff uses multiple storage devices with full backup facilities; including both on-site and off-site storage and distant hot-site facilities.

Retrievability: Records are indexed by Appellant name, NAD log number, State, and hearing officer.

Safeguards: Computer Associates Access Control Facility software controls who may use computer resources and protects data from accidental or deliberate destruction, modification, disclosure, and misuse. Computer Associates Access Control Facility is maintained and used solely by members of the National Computer Center, Kansas City Security Staff.

Retention and disposal: Records are kept indefinitely.

System manager(s) and address: System Security Administrator, Information Systems Security Staff, 2350 Market Street, St. Louis, Missouri 63103.

Notification procedure: An individual may request information as to whether the system contains records pertaining to him or her from Director, NAD, USDA, 3101 Park Center Drive, Suite 1020, Alexandria, Virginia 22302, telephone number (703) 305–1151. A request for information pertaining to an individual should contain full name, address, and zip code.

Record access procedures: Any individual may obtain information as to the procedures for gaining access to and contesting a record in the system which pertains to him or her by submitting a written request to the appropriate official referred to in the preceding paragraph.

Contesting record procedures: Same as Record Access Procedures.

Record source categories: Records in this system come primarily from data entered by Regional offices maintaining appeal records on the program participant. Information in these records is obtained from appellants and agency decision makers.

Systems exempted from certain provisions of the act: None.

[FR Doc. 96–27767 Filed 10–29–96; 8:45 am]
BILLING CODE 3410–18–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Census Employment Inquiry.

Form Number(s): BC–170.

Agency Approval Number: 0607–0139.

Type of Request: Revision of a currently approved collection.

Burden: 26,162 hours.

Number of Respondents: 104,650.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau uses the BC–170, ''Census Employment Inquiry'' to obtain employment information from job applicants before or at the time they are tested. The data gathered are used by selecting officials to determine an applicant's initial qualifications to fill Census jobs. The form is intended to facilitate speedy hiring and selection in situations requiring large numbers of temporary employees for assignments of a limited duration. The BC–170 is used in lieu of Form OF–612, ''Optional Application for Federal Employment,'' or a resume but an applicant is not required to complete a BC–170 if he/she has either of these other documents completed.

Affected Public: Individuals or households.

Frequency: One–time.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Title 13 USC, Section 23.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 24, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–27760 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–07–F

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Applicant Background Questionnaire.

Form Number(s): BC–1431.

Agency Approval Number: 0607–0494.

Type of Request: Revision of a currently approved collection.

Burden: 2,032 hours.

Number of Respondents: 48,750.

Avg Hours Per Response: Two and one–half minutes.

Needs and Uses: The Census Bureau uses the Applicant Background Questionnaire to obtain information such as medical disabilities and race and national origin from applicants for Schedule A (excepted service) positions. The data collected are analyzed to evaluate and improve the Bureau's Schedule A hiring program and to strengthen our ability to develop a more widely diverse workforce. We believe that by hiring a workforce culturally familiar with the census enumeration areas we collect better quality data, conclude the data collection in a more timely fashion and also achieve our hiring goals.

Affected Public: Individuals or households.

Frequency: One–time.

Respondent's Obligation: Voluntary.

Legal Authority:

P.L. 92–261; Equal Employment Opportunity Act of 1972, Section 717

P.L. 94–311; Joint Resolution relating to the publication of economic and social statistics for Americans of Spanish origin or descent

43 FR 38297, Section 4; Information on Impact

5 USC 7201; Anti–discrimination Policy; Minority Recruitment Program

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 24, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–27761 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Docket 78–96]

Foreign-Trade Zone 49—Newark/ Elizabeth, NJ, Proposed Foreign-Trade Subzone, Chevron Products Company (Crude Oil Refinery), Perth Amboy, New Jersey

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of New York and New Jersey, grantee of FTZ 49, requesting special-purpose subzone status for the crude oil refinery of Chevron Products Company, located in Perth Amboy, New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 21, 1996.

The refinery (80,000 barrels per day capacity; 82 employees) is located at a 340-acre site at 1200 State Street, Perth Amboy (Middlesex County), New Jersey, in the New York City port of entry area. It is used to produce asphalt and refinery feedstocks, including residual fuel oil, distillate fuel oil, kerosene, naphthas, propane, butane and other petroleum gases. All of the crude oil (nearly all inputs) is sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on asphalt, and certain other refinery products such as propane, butane and other petroleum gases (duty-free) instead of the duty rates that would otherwise apply to the foreign-sourced inputs (e.g., crude oil, natural gas condensate). The duty on inputs ranges from 5.25¢ to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 30, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 14, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 3131 Princeton Pike, Bldg. #6, Suite 100, Trenton, NJ 08648

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: October 23, 1996.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 96–27855 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 77–96]

Foreign-Trade Zone 147—Reading, Pennsylvania; Request for Manufacturing Authority, Baker Refractories, Inc. (Refractory Bricks)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone Corporation of Southeastern Pennsylvania, grantee of FTZ 147, pursuant to § 400.28(a)(2) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of Baker Refractories, Inc. (Baker), to manufacture refractory bricks under zone procedures within FTZ 147. It was formally filed on October 18, 1996.

The Baker plant (446,000 sq. ft. on 624 acres) is located at 225 North Emigsville Road within a proposed site of FTZ 147 in the International Trade District of York, in the County of York, Pennsylvania. (Pending expansion application: Docket 3–96, 61 FR 2487, 1–26–96.) The Baker plant (360 employees) is used to manufacture refractory bricks and related products for the metals and mineral processing industries. A key material component, magnesia, is sourced from abroad (magnesia duty rate, $0.2/kg). The finished magnesite bricks are duty-free. The application indicates that 35 percent of the plant's shipments are exported.

Zone procedures would exempt Baker from Customs duty payments on the foreign components used in export production. On its domestic sales, Baker would be able to defer duty payments on the foreign sourced magnesia until the finished bricks (duty-free) are shipped from the plant. The company is also seeking an exemption from Customs duties on scrap and waste that is generated in the production process (2.5%). The request indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 29, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 16, 1996).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: October 18, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–27857 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

Docket A(32b1)–4–96

Foreign-Trade Zone 39—Dallas/Fort Worth, TX, Request for Manufacturing Authority, Selective Technology, Inc. (Automotive Air-Conditioner Components)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of Selective Technologies, Inc. (Seltec) (a joint-venture of Tama Manufacturing and Zexel, of Japan), to manufacture automotive air-conditioner compressors under zone procedures within FTZ 39. It was formally filed on October 18, 1996.

Seltec operates an automotive air-conditioner compressor assembly facility (50 employees) within FTZ 39, and this application requests authority to allow Seltec to conduct the activity under FTZ procedures. Seltec's compressors are sold in the automotive parts aftermarket and to specialty original equipment motor vehicle manufacturers in the U.S. and abroad. The activity involves the assembly of finished air-conditioner compressors using foreign-sourced compressor units (comprising about 72% of the finished products' value) and foreign and domestically-sourced electromagnetic clutches. The application indicates that 32 percent of the finished air-conditioner compressors' material value will be U.S. sourced within two years.

Zone procedures would exempt Seltec from Customs duty payments on the foreign components used in export activity (some 50% of shipments). On its domestic sales, Seltec would be able to elect the duty rate that applies to finished automotive air-conditioner compressors (2.0%) for the foreign electromagnetic clutches as they are processed for Customs entry, rather than the higher rate on electromagnetic clutches (3.6%). The motor vehicle duty rate (2.5%) could apply to the foreign electromagnetic clutches that are shipped as part of air-conditioner compressors to motor vehicle assembly plants with subzone status for inclusion into finished motor vehicles under FTZ procedures. The application indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 29, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 16, 1996).

A copy of the application will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: October 22, 1996.

John J. Da Ponte, Jr.

Executive Secretary

[FR Doc. 96–27856 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination Not to Revoke Antidumping Duty Orders and Findings

Nor to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on September 3, 1996, we published in the Federal Register a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–570–101

The People's Republic of China

Greige Polyester/Cotton Printcloth

Objection Date: September 30, 1996

Objector: American Textile Manufacturers Institute

Contact: Amy Wei at (202) 482–1131

Dated: October 15, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 96–27762 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on July 30, 1996, we published in the Federal Register a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–427–009
France
Industrial Nitrocellulose
Objection Date: August 27, 1996
Objector: Aqualon Division, Hercules Incorporated
Contact: David Dirstine at (202) 482–4033

A–588–055
Japan
Acrylic Sheet
Objection Date: August 26, 1996
August 27, 1996
Objector: CYRO Industries
ICI Acrylics Inc.
Contact: Tom Futtner at (202) 482–3814

A–588–704
Japan
Brass Sheet & Strip
Objection Date: August 13, 1996
Objector: The Copper & Brass Fabricators Council
Contact: Tom Killiam at (202) 482–2704

A–549–601
Thailand
Malleable Pipe Fittings
Objection Date: August 29, 1996
Objector: Grinnell Corp., Ward Manufacturing Inc.
Contact: Zev Primor at (202) 482–4114

A–421–701
The Netherlands
Brass Sheet & Strip
Objection Date: August 13, 1996
Objector: The Copper and Brass Fabricators Council
Contact: Tom Killiam at (202) 482–2704

A–570–504
The People's Republic of China
Petroleum Wax Candles
Objection Date: August 7, 1996
Objector: The National Candle Association
Contact: Valerie Turoscy at (202) 482–0145

Barbara R. Stafford,

Deputy Assistant Secretary for AD/CVD Enforcement

Dated: October 11, 1996.

[FR Doc. 96–27763 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–820]

Certain Compact Ductile Iron Waterworks Fittings and Glands (CDIW) From the People's Republic of China (PRC); New Shipper Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the new shipper antidumping duty administrative review of CDIW from the PRC. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period August 1, 1995 to February 29, 1996.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: Paul M. Stolz, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION: Because this is a new shipper review involving a nonmarket economy country, the Department must determine whether the new shipper, Beijing M Star Pipe Corp., Ltd. (BMSP), has not shipped during the period of investigation and whether BMSP is entitled to a separate rate, both of which we intend to verify. For these reasons, we consider this review to be extraordinarily complicated, and are extending the time limit for the completion of the preliminary results to February 13, 1997, in accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act, effective January 1, 1995. (*See* Memorandum from Jeffrey P. Bialos to Robert S. LaRussa.) We will issue our final results for this review by May 14, 1997.

This extension is in accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(2)(B)(iv).

Dated: October 15, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–27853 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–428–604]

Certain Forged Steel Crankshafts From Germany, Revocation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Revocation of Antidumping Duty Order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping duty order on certain forged steel crankshafts from Germany because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: Amy Wei or Michael Panfeld, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR § 353.25(d)(4)(iii)).

On September 3, 1996, the Department published in the Federal Register (61 FR 46437) its notice of intent to revoke the antidumping duty order on certain forged steel crankshafts from Germany (September 23, 1987). Additionally, as required by 19 CFR § 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping duty order on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2(k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order on certain forged steel crankshafts from Germany is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR § 353.25(d)(4)(iii).

Scope of the Order

Imports covered by the revocation are shipments of certain forged steel crankshafts from Germany. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 8483.10.10, 8483.10.10.30, 8483.10.30.10, and 8483.10.30.50. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

This revocation applies to all unliquidated entries of certain forged steel crankshafts from Germany entered, or withdrawn from warehouse, for consumption on or after September 1, 1996. Entries made during the period September 1, 1995, through August 31, 1996, will be subject to automatic assessment in accordance with 19 CFR § 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1996, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR § 353.25(d).

Dated: October 15, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 96–27764 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–538–802]

Shop Towels From Bangladesh; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 6, 1996, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on shop towels from Bangladesh. The review covers six shop towel producers that exported this merchandise to the United States during the period March 1, 1994, through February 28, 1995.

Based on our analysis of the comments received on our preliminary results, we have made changes to our calculations for the final results. The review indicates the existence of dumping margins for certain firms during the review period.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi, Matthew Rosenbaum or Kris Campbell, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On May 6, 1996, the Department of Commerce (the Department) published in the Federal Register (61 FR 20231), the preliminary results of its 1994–1995 administrative review of the antidumping duty order on Shop Towels from Bangladesh (57 FR 9688 (March 20, 1992)). We gave interested parties an opportunity to comment on the preliminary results and received case briefs and rebuttal briefs from the petitioner, Milliken & Company (Milliken), and two respondents, Greyfab and Hashem. We held a public hearing on July 11, 1996, as requested by Greyfab and Hashem.

In the preliminary results we calculated profit for constructed value (CV) under section 773(e)(2)(B)(iii) of the Act. We used this method because we had no information on actual profit amounts earned by the exporters in connection with the production and sale of the merchandise for consumption in the home market or any information that would permit us to use any of the alternatives for calculating profit under section 773(e)(2) of the Act. We could not calculate the ''profit cap'' prescribed by section 773(e)(2)(B)(iii) based on sales for consumption in the ''foreign country'' of merchandise that is in the same general category of products as the subject merchandise because we had no such information. Instead, we applied another reasonable method under 773(e)(2)(B)(iii). For each of the five responding companies, the only facts available for the preliminary results were the amounts for profit earned and realized by the individual respondent as shown in each company's financial statements, profit earned solely on sales to the United States. Hence, we used these profits in our calculation of CV.

As a result of the comments we received and the discussion at the public hearing, we requested additional information from petitioner, Milliken, and respondents relevant to the calculation of the profit rate. We received a submission containing factual information regarding profit from two respondents (Greyfab and Hashem) on July 26, 1996. We received comments from petitioner regarding respondents' submission on August 8, 1996. For these final results, we are using the actual profit amounts of textile mills that sold the same general category of products as the subject merchandise in the home market during the POR (*see* Comment 7, below).

The Department has completed this administrative review in accordance with section 751 of the Act.

Scope of Review

This administrative review covers six firms for the period March 1, 1994, through February 28, 1995: Eagle Star Mills, Ltd. (Eagle Star); Greyfab Bangladesh Ltd. (Greyfab); Hashem International (Hashem); Khaled Textile Cotton Mills, Ltd. (Khaled); Shabnam Textiles (Shabnam); and Sonar Cotton Mills (BD), Ltd. (Sonar).

The product covered by this administrative review is shop towels. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100-percent cotton or a blend of materials. Shop towels are currently classifiable under item numbers 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedule (HTS). Although HTS subheadings are provided for convenience and customs purposes, our written description of this proceeding remains dispositive.

Analysis of Comments Received

Comment 1: Respondents Greyfab and Hashem contend that the method the Department used to calculate profit in the preliminary results of review is unreasonable because, in calculating an amount for profit, the Department imputed certain credit and interest expenses in its calculation of selling, general and administrative expenses (SG&A) which are not reflected in the company's financial statements rather than accounting for actual credit and interest expenses. Respondents contend that, if the Department makes an adjustment for imputed credit and interest expenses, it should also reduce the reported profit by the amount of such imputed expenses. Respondents purport that, under the Department's methodology in the preliminary results, the Department used profit to increase the normal value yet, at the same time, for the purpose of determining costs the Department rejected the profit data on the basis that it is overstated.

Milliken responds that the Department is under no obligation under section 773(e)(2)(B)(iii) of the Act to adjust the amount for profit recorded in the respondents' financial statements to take into account imputed SG&A expenses. Petitioner argues further that, since the record does not contain any data concerning company profits on home market sales and because the only data available are profit amounts recorded in respondent's financial statements, the Department properly used that data and, in addition, the statute does not require the Department to evaluate each aspect of that data or to adjust them. Milliken cites the *Final Determination of Sales at Less Than Fair Value: Pure Magnesium from the Russian Federation*, 60 FR 16440, 16447 (March 30, 1995), and claims that, in that case, the Department rejected petitioner's claim that certain elements of the surrogate value for factory overhead should be adjusted to make it more accurate.

Department's Position: We agree with Milliken that we are under no obligation to adjust the amount for profit recorded in the respondents' financial statements to take into account imputed SG&A expenses. As discussed in response to additional comments below, however, we have not used respondents' U.S. sales experience to calculate profit in these final results, and therefore this issue is moot.

Comment 2: The respondents contend that the Department's profit methodology in the preliminary results is unreasonable in that, for the purpose of calculating CV, the Department calculated an average profit based on the total profit realized on sales to the United States. Respondents state that the Department added the average profit to the normal value for sales of that same merchandise. Respondents indicate that, if there is any variation in price on those sales, sales that earn a profit below the average level of profits will always yield a dumping margin under this methodology. In addition, respondents contend that the Department will always find dumping margins using this methodology because, as prices rise, profit will also increase, resulting in an upward adjustment to CV. Therefore, respondents argue, this methodology forces the company to lower its U.S. prices in order to lower the dumping margin of the company, which is contrary to the very purpose of the antidumping statute.

Milliken argues that the methodology the Department used to determine the profit calculations is lawful and reasonable and is in accordance with section 773(e)(2)(B) of the Act. Milliken suggests that, given the absence of other data in this case and the fact that the only profit data available to the Department was the profit information reported in respondents' financial statements, the Department had no alternative but to use this information as facts available in determining the profit respondents earned on sales made to the United States.

Milliken contends that the Statement of Administrative Action (SAA) provides four principles which support the Department's profit calculation in the preliminary results: the statute does not establish any hierarchy among the alternative choices for determining profit and the Department's use of any particular method should depend upon the facts of each case and available data; there is a strong preference to use the actual company records of respondents in order to ensure that the source of the data is reliable, independent, in accordance with generally accepted accounting principles, and capable of verification; the use of alternative methods to determine profit in CV situations should not diminish the antidumping relief due the domestic industry; in determining profit on the basis of the third method set forth in section 773(e)(2)(B)(iii) of the Act the Department should not make an adverse inference in applying the facts available unless the company in question withheld information the Department requested.

Milliken asserts that, absent home market profit data, the Department relied upon actual, audited company data in accordance with the SAA. In addition, Milliken contends that the methodology the Department used to calculate profit in its preliminary results meets the guidelines set forth in the SAA which, in turn, ensures that the domestic industry is not unfairly disadvantaged by the absence of data on the record. Milliken states that respondents are in a better position to obtain profit information on home market sales than is the Department. Therefore, given respondents' interest in the Department's calculation of profit, Milliken contends that respondents should have submitted this profit information on the record in a timely manner.

Milliken states that, since respondents have no home market or third-country sales and since the Department had no other profit information on the record, the Department's reliance on respondents' profit made on export sales of shop towels to the United States was reasonable and lawful, as the law provides for the use of ''any other reasonable method'' to calculate profit on the basis of facts available. Milliken therefore purports that, given the data presently on the record and the fact that the Department addressed the SAA's concerns of using independent and reliable data (*e.g.,* audited financial statements prepared in accordance with generally accepted accounting principles), the Department properly calculated profit for CV.

Milliken disagrees with respondents' claim in this case that the Department's profit determination would require Greyfab, for example, to lower prices on exports of non-subject merchandise to the United States in order to reduce its dumping margin in future reviews. Milliken claims that the Department must determine profit under section 773(e)(2)(B)(iii) and not worry about what might happen in future reviews.

Department's Position: We agree with the respondents that it is inappropriate to calculate profit for addition to CV based on the respondents' U.S. sales. The statute is clear that we must derive profit on the basis of home market or third-country sales. As indicated earlier, after the hearing we gave parties an opportunity to provide additional information which we have analyzed. See our responses to Comments 3, 5 and 7.

Comment 3: Respondents contend that the Department's use of profit realized on U.S. sales to calculate CV is contrary to section 773(e)(2)(B)(iii) of the Act because the profit level on U.S. sales exceeds the profit ''cap'' prescribed by the Act. Respondents state that, because none of the respondents sell the foreign like product for consumption in Bangladesh, the costs and profit amounts in the financial statements relate only to U.S. sales. Given this situation, respondents assert, the only alternative the Department may use is an amount for profit and SG&A based on any other reasonable method, in accordance with section 773(e)(2)(B)(iii) of the Act.

Respondents identify three statutory alternatives for calculating SG&A and profit for addition to CV, all of which rely on data gathered on sales and production of merchandise for consumption in the home market. Respondents also cite the statutory requirement that the amount allowed for profit may not exceed the amount normally realized by exporters or producers for consumption in the foreign country of merchandise that is in the same general category of products as the subject merchandise. Respondents contend that this provision establishes a profit ''cap'' which limits the amount the Department may use as profit in its CV calculations. Respondents object to the Department's decision not to calculate a profit cap because it had no information on sales in the home market of the same general category of merchandise as shop towels upon which to base the calculation. Respondents argue that, since they do not sell shop towels or any other textile product for consumption in Bangladesh, the above-mentioned statutory alternatives are not available in this case.

Respondents contend that the information they provided in the case brief supersedes and is more reasonable to use than the information that is already on the record. Respondents urge the Department to replace the methodology it used in determining the profit level and profit cap in the preliminary results of review with the information in the case brief. According to respondents, there is publicly available information that establishes that there is little or no profit realized on sales of textiles in Bangladesh, including several World Bank reports, a report prepared by the Bangladesh Bureau of Statistics which is compiled in the ordinary course of its governmental functions, and several audited financial statements of privately held companies which are listed in the Bangladesh stock exchange.

Respondents argue that the SAA indicates that unprofitable sales can be considered in establishing the profit cap. Respondents contend that, given that information from reliable, independent sources supports the finding that there is no profit normally realized on sales of textiles in Bangladesh, the statute requires that in the calculation of CV the profit cap must be equal to zero.

Milliken states that the information which respondents submitted in their case briefs regarding the level of profitability of textile producers in Bangladesh is untimely, out-of-date, unreliable and inappropriate for determining profit under section 773(e)(2)(B)(iii).

In the event the Department considers the information for its final results, Milliken asserts that the World Bank reports cannot be used because they relate to the experience of state-owned enterprises (SOEs), which cannot be compared with respondents' experience. Milliken explains that, unlike SOEs, respondents are privately owned enterprises located in export zones which benefit from superior infrastructure and greater efficiency than SOEs. Milliken states that, because respondents' companies are very different from SOEs, the Department should not use the information in the

World Bank reports to determine profits or to establish the profit cap.

Department's Position: Because we indicated at the public hearing for this proceeding that we would accept the new information and allow interested parties to comment on the issue of profit calculation, we have accepted the information respondents included in their case briefs. Under these circumstances, the Department clearly has the discretion to accept new information. Indeed, 19 CFR 353.31 (b) (1) indicates that the Department has the discretion to ''request any person to submit factual information at any time during the proceeding'' except under certain circumstances not applicable in this case.

According to section 773(e)(2)(B) of the Act, the Department has three alternatives if actual data are not available with respect to actual amounts incurred and realized by the specific exporter being reviewed for SG&A expenses and for profit, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country. The first two methods refer to costs and profits based on production and sales for consumption in the foreign country, which is the home market. The third option allows for the calculation of costs and profit to be made using any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise. Because all three options require use of an amount which reflects profit in connection with sales *for consumption in the foreign country*, we cannot calculate profit based on respondents' data in this case since none of the respondents sold shop towels or other merchandise in the home market.

We disagree with the respondents' contention that we should apply a zero-level profit cap based on the information they submitted. These data do not constitute the best source for information on which we would base the profit cap given that respondents provided more reliable information in their post-hearing submission (*see* Comment 7, below). The profit figures listed for SOEs in the reports are for 1989 through 1993, a period that is prior to the POR.

The Bangladesh Bureau of Statistics report lists gross sales margins for several Bangladesh industries, including the textile, apparel and accessory industry. However, this report covered the 1989 through 1990 period, which is a period not contemporaneous with the POR and precedes the POR by four years. The data that we used is preferable since it is closer in time to the POR.

The annual report that the respondents submitted in their case brief includes the financial statements of a Bangladesh textile company. However, as indicated in the notes to the accounts for the year ended December 31, 1995, this company only made export sales. Hence, since this company does not sell any merchandise in Bangladesh, for the same reasons that we cannot use the profit data of the respondents in this case, we cannot use the information in this company's financial statement.

Therefore, for these final results, we have not relied on the information respondents submitted in the case brief.

Comment 4: Respondents contend that, by using their own profit levels on sales to the United States as facts available, the Department drew an adverse inference against the companies which is inappropriate, given their participation in this review. Respondents state that they raised the question of the calculation of profit to the Department earlier in the administrative review process, but the Department did not make any attempt to develop information on the record, request such information, or implement the statutorily required cap. Therefore, respondents contend, the Department penalized them by applying facts available. Respondents state that the law requires that the Department make some minimal effort to obtain this information on the record in order to implement all of its statutory obligations.

Milliken argues that the SAA prescribes that, in calculating profit, the Department may use any other reasonable method based on the facts available. Milliken states that the Department properly used the only profit data that was available on the record.

Department's Position: As discussed below, we have changed our profit calculation from that which we used in the preliminary results and are, therefore, not relying on the United States profit experience as facts available. Therefore, respondents' argument is no longer relevant.

Comment 5: Respondents contend that, if the Department does not consider the submitted information to be sufficient for purposes of determining the profit cap, the Department should still use the information submitted in respondents' case brief as facts otherwise available. Respondents state that, by using such information as facts otherwise available, the Department would be adhering to both the statute and the SAA. Respondents argue that they have not withheld such information as it relates to the calculation of the profit cap nor have they failed to provide such information, but, rather, the Department erred by not requesting information concerning the statutory profit cap or the profitability of producers selling textile products in the home market.

Milliken contends that, if the Department changes its methodology of calculating profit for the final results of review, the Department should provide Milliken with a description of the methodology employed in the calculation of CV and an explanation of why it was selected, as directed in the SAA, as well as an opportunity to submit comments on such possible changes prior to its issuance of the final results.

Department's Position: We have determined, as discussed below, that information submitted by respondents after their submission of the case briefs is reasonable to use as a profit cap and have not relied on the information submitted in the case briefs as facts otherwise available. Regarding a change in the methodology, we have explained in these final results how and why we have made changes. In addition, petitioner had an opportunity to comment on all information on the record regarding the profit issue.

Comment 6: Respondents state that the statute does not preclude the Department from using the eight-percent rate from the pre-URAA statute as the ''law of the case'', absent other available data on the sales and profitability of Bangladesh textile companies in the home market. Respondents assert that using the eight-percent profit level as the law of the case is reasonable and that its use is more defensible than use of actual profit realized on the sale of the same merchandise which is alleged to have been dumped in the United States.

Milliken states that the new law no longer provides for a statutory eight-percent minimum profit to be used in the calculation of CV. Milliken argues that it is, therefore, unlawful to use the eight-percent profit rate as suggested by respondents.

Department's Position: Because we are conducting this review under the Act which became effective on January 1, 1995, we no longer have an eight-percent minimum profit figure as a statutory instruction for use in CV calculations under section 773(e)(2)(B).

Although we used the eight-percent minimum in previous reviews of this order under the pre-URAA statute, we do not have the discretion under section 773(e)(2)(B) to apply eight percent as ''law of the case''.

Comment 7: In their post-hearing submission, respondents Greyfab and Hashem provided several documents regarding the profits of Bangladesh textile producers. The submission includes a certificate from the president of the Bangladesh Specialized Textile Mills and Power Loom Industries Association (Textile Association) regarding the state of the power-loom-weaving subsector of the textile sector in the Bangladesh economy, a summary from a report on the power-loom subsector, an executive summary of a final report on the textile power-loom-weaving subsector prepared for the Bangladesh Tariff Commission in December 1995, and financial statements of four textile companies located in Bangladesh.

Respondents contend that the certificate from the president of the Textile Association indicates that the Bangladesh textile weaving industry in the private sector is ''sick,'' suggesting that expected net profit for the textile and power-loom industries is eight percent or lower.

The Tariff Commission report, according to the respondents, identifies problems in the power-loom-weaving subsector and suggests changes in the country's tariff structure to help rehabilitate the industry, which is plagued by a number of problems.

The respondents contend that annual reports for the 1995 fiscal year for two textile companies, the 1994 fiscal year for a third company, and for the 1993 fiscal year for a fourth company indicate that the companies had a net loss for the relevant periods (although the company for which the respondents submitted the 1993 annual report showed a profit in 1992 and 1993).

Regarding the reports from the Textile Association and the Tariff Commission, Milliken contends that the material contained in the exhibits are overly broad, speculative and of little value. Milliken claims that the report does not identify the types of entities that comprise the textile industry and whether they are state-owned. If they are state-owned, claims Milliken, their operations cannot be properly compared to the producers in this case. Milliken also claims that the eight-percent profit rate cited by the respondents is merely a projection and that the company's reported profits might include profits on export sales in addition to home market sales.

Milliken contends that two of the annual reports do not clearly state whether the company only sells the same merchandise of the same general product category as shop towels or whether they export their merchandise. Petitioner claims that, for one of those companies, the annual report states that no production was made since August 1994, which would render the company's net profit results aberrational and not reasonable for the calculation of profit for the Department's CV purposes. For another company, Milliken claims that the annual report refers to 1992 and 1993, years which are outside the POR, and that the company is a yarn spinner and not a weaver of fabric. As a result, Milliken contends that the Department cannot use the data from this company. Milliken claims that the final company's figures cannot be used because the company is engaged in yarn-spinning operations, not fabric weaving, and that the product is not in the same general category of products as shop towels. In addition, Milliken claims this company's data cannot be used because the company began commercial production on January 1, 1994, and had production problems that led to a low capacity-utilization rate. Hence, Milliken claims, the company's 1994 results are unreliable for determining profit in this case. In addition, Milliken claims that there is a good reason to believe that the company's operations also include export sales.

Department's Position: We have determined that the financial statements of three companies provide data from which, in accordance with section 773(e)(2)(B)(iii) of the Act, we can reasonably calculate profit for these final results. In light of our alternatives in this case, this information provides a reasonable method to use in calculating profit because we are using the actual profit amounts of textile mills that sold merchandise that is in the same general category of products as the subject merchandise in the home market during the POR.

Respondents' post-hearing submission included a summary of a report on the power-loom-weaving subsector of the textile sector in the Bangladesh and an adjoining certificate of the state of the Bangladesh textile industry. There was no useful information in the report summary or in the certificate. Specifically, the report summary did not indicate any specific profit figures for the textile industry in Bangladesh. While this report summary did include an earnings forecast it is not clear which sector of the industry is covered by this forecast, nor does the report summary indicate the source of this forecast or the time period it covers. It is not clear if this forecast covers textile companies that export or sell textiles in Bangladesh. Hence, since this report summary does not list any specific profit information for Bangladesh shop towels or the same general category of products, we did not use the report summary in our calculation of profit.

The Bangladesh Tariff Commission report respondents submitted did not list any profit figures or any other data which we could use in the calculation of profit for this case.

The respondents submitted three sets of financial statements covering the POR from companies located in Bangladesh that, according to the annual reports, are in the textile industry. These companies produce yarn, cotton products, and weaving products, which are in the same general category of products as the subject merchandise. It is also clear that these companies sell merchandise in Bangladesh. Therefore, because this information reflects profit amounts normally realized by exporters or producers in connection with sales for consumption in the foreign country of merchandise that is in the same general category of products as the subject merchandise, use of this information constitutes a reasonable method for calculating an amount for profit in accordance with section 773(e)(2)(B)(iii) of the Act.

One company produces textiles in Bangladesh and incurred a loss in its weaving unit for the period July 1, 1994 through June 30, 1995, which includes a portion of the POR. While we do not know whether this company actually produced shop towels, its financial statements indicate that it sold woven products, which are in the same general category of products as the subject merchandise. The second company is also a textile company that sells cloth, a product in the same general category of products as the subject merchandise, in Bangledesh. In its profit and loss statement, this company posted a loss for the period of October 1, 1993 through September 30, 1994, which includes a portion of the POR. Although this company closed its factory in August 1994, we have used its data for the 1993–94 fiscal year because that coincides partially with the POR. The third company's annual report indicates that it supplied high-quality cotton and polyester yarn to Bangladesh knitting mills, and its half-yearly results showed that it made a profit during the period October 1994 though March 1995. This entire period, except for one month, falls within the POR. The respondents also provided an annual report for a fourth textile company in Bangladesh.

However, we did not use this company's data since the annual report is for the 1993 calendar year, which ends before the POR begins.

For these final results of review, we have calculated a profit amount of 3.05 percent by using a simple average of the profit ratios of the three Bangladesh textile companies that operated during some or all of the POR. The three profit ratios, which we derived from the annual reports of the companies, as described above, were zero, zero, and 9.148 percent.

Comment 8: Greyfab contends that, in determining the profit earned during the POR, the Department incorrectly used the profit figure which included cumulative profit generated from the prior period not covered by this administrative review. Greyfab states that the Department should exclude the profit earned from the prior period from the calculation of profit.

Department's Position: Given our revised profit calculation in these final results, Greyfab's argument is no longer relevant.

Comment 9: Greyfab contends that the Department improperly calculated the total imputed interest expense for Greyfab's loan from its directors. Respondent indicates that, in its calculation, the Department used a total annual interest expense figure and divided this figure by a cost of production figure based on an eight-month period. Greyfab states that the Department should calculate the total imputed interest expense using an equivalent period.

Department's Position: We disagree with Greyfab. It is the Department's practice to calculate a net interest expense factor based on a respondent's full-year audited financial statements for the year that most closely corresponds to the POR. *See e.g., Shop Towels from Bangladesh; Final Results of Antidumping Duty Administrative Review*, 60 FR 48966, 48967 (September 21, 1995); *see also Final Determination of Sales at Less Than Fair Value; Canned Pineapple Fruit from Thailand*, 60 FR 29553, 29569 (June 5, 1995). The auditor's report in Greyfab's financial statements indicates that the profit and loss statement is ''for the year ended on that date'' (February 28, 1995). However, the heading of the profit and loss and the trading account statements suggest that they cover a period from July 1994 to February 1995. Due to conflicting evidence in Greyfab's financial statements, we were unable to determine with certainty whether the profit and loss and the trading account statements do, in fact, cover only eight months. We therefore computed the interest expense factor using a full-year's imputed interest expense.

Comment 10: Hashem contends that the Department improperly imputed an interest expense on its loan to its directors. Hashem argues that this loan is reported as an asset in the company's balance sheet and the nature of the loan is explained in its supplemental questionnaire response. Hashem states that, for the final results, the Department should not impute an interest expense on an asset.

Department's Position: We agree with Hashem. Thus, for these final results, we did not impute an interest expense on the loan in question.

Comment 11: Milliken states that respondents indicated in their questionnaire responses and supplemental questionnaire responses that they incur both yarn wastage and yield loss in the manufacture of shop towels. Milliken argues that respondents did not report any amounts for yarn wastage or yield loss in their CV calculations. Milliken also notes that there was a percentage for wastage incurred in the production of shop towels specified in a tolling contract between Sonar and a certain export company. Milliken asserts that, as a result, the Department should use the rate specified in that contract as facts available in the calculation of CV for each of the respondents as the rate can serve as both a reliable and objective measure for yarn loss.

Hashem contends that its reported material cost figures do not assume a 100% manufacturing yield and that a waste factor was, in fact, built into its reported material costs. Hashem explains that a portion of the finished towel consists of sizing material added to the yarn during the production process. Further, Hashem states that its material cost figures are based on the assumption that one full kilogram of cotton is contained in each kilogram of shop towels produced.

Respondents also state that Milliken misunderstands the manner in which Hashem has calculated its material costs. Hashem asserts that, contrary to Milliken's claim that the cotton yarn which constitutes the finished shop towel is valued at a rate applicable to sizing material, Hashem has calculated the value of sizing material present in the towel at a rate applicable to cotton yarn. Hashem further asserts that, by employing this calculation, it overstates the amount of cotton yarn in the towel which, in essence, includes a waste factor in the reported material cost figures. Hashem contends that, consequently, there is no basis for rejecting its methodology in lieu of an unrelated contract made between two other producers.

Greyfab asserts that it calculates material costs in the same manner in which Hashem calculates material costs. Greyfab argues that, similar to Hashem, it reported material costs which include a waste factor. Respondents state that, given the manner in which material costs were reported, there is no basis to artificially increase such costs.

Department's Position: We agree with Milliken that we should increase the total cost of materials to account for wastage incurred, but not by the full amount Milliken suggests because that amount is not indicative of the actual amount of wastage incurred by respondents during the POR. During the course of this administrative review, respondents indicated on the record that they incur a minimal yield loss in the production of shop towels. Hashem, Greyfab and Shabnam also indicated that they have accounted for the wastage by adding a cost for sizing materials to their total material costs. However, an amount that respondents claim to be equivalent to sizing materials does not accurately represent an amount for wastage incurred. Respondents did not provide any information on the record that would indicate that the cost of sizing materials is equivalent to the cost of the actual wastage incurred. Because we have no information on the record indicating the actual amount of waste incurred by each company, in accordance with section 776(a) of the Act, we must add a waste factor. Therefore, as facts available, we have added a waste factor to each respondent's CV calculation. We are not adding an amount equal to the waste factor that Milliken suggested in its case brief because that amount was extrapolated from a tolling agreement between Sonar and a certain export company which is not likely to be indicative of the actual amount of wastage incurred by respondents during the POR. Rather, as facts available, we have increased each respondent's total material cost by a waste factor equal to the difference between the average waste factor reported by Greyfab and Hashem's average amount for the sizing material that it built into its reported material costs.

Comment 12: Milliken states that Khaled submitted data for the 1993–94 POR rather than data for the current 1994–95 POR in its questionnaire response to the Department. Milliken contends that the Department should apply facts available to Khaled's response because the company failed to submit relevant POR cost and sales data to the Department. In addition, Milliken indicates that Khaled submitted new sales and cost data relevant to the current POR in its supplemental questionnaire response. Milliken argues that this new data should be rejected because it was not properly filed with the Department or served to Milliken, thus depriving Milliken of its opportunity to comment on the submission and check the accuracy of the data submitted. Milliken asserts that, because Khaled did not submit reliable POR data, the Department must rely on facts available and should use the rate established for Khaled in the most recently completed administrative review.

Department's Position: For these final results, the Department analyzed the 1994–95 sales and cost data Khaled submitted on April 18, 1996, in response to the Department's supplemental questionnaire. Khaled's data was submitted within the time limits set by the Department for submission of supplemental information and prior to the Department's issuance of its preliminary results.

In the interest of fairness to the parties and calculating dumping margins as accurately as possible, it is appropriate for the Department to accept and analyze the data rather than to use the 1993–94 data. In fact, Khaled attempted to submit a questionnaire response containing data for the 1994–95 POR in August 1995, but did not submit it properly. Thus, the Department did not accept it. However, subsequently, on April 18, 1996, Khaled did submit properly the 1994–95 data to the Department for this 1994–95 administrative review.

Milliken does not explain the basis for its allegations that Khaled's April 18, 1996 submission was improperly served on Milliken and improperly filed with the Department. Furthermore, the Department has no record evidence demonstrating that Khaled's submission was improperly served or filed. Moreover, Khaled submitted to the Department a certificate indicating that it served its response on all of the interested parties. Therefore, the Department has not deemed the April 18, 1996 submission to have been improperly served or filed. Because the information was timely filed and because Milliken has not provided adequate reasons for rejecting the 1994–95 data, the Department has accepted the April 18, 1996 submission for the final results.

Comment 13: Milliken contends that Sonar failed to properly serve its questionnaire response on Milliken. In addition, Milliken argues that Sonar's reported CV data cannot be reconciled with its financial statements. Milliken argues that there are numerous problems with Sonar's supplemental questionnaire response. Milliken states, for instance, that there were discrepancies between Sonar's CV worksheet and its audited CV of Shop Towels statement with regard to cost categories or amounts. In addition, Milliken asserts that Sonar failed to adequately explain in its supplemental questionnaire response why these statements do not reconcile. Also, Milliken contends that Sonar does not provide enough cost and other information associated with its contractual agreement with a certain export company. For these reasons, Milliken argues that Sonar failed to provide a complete and accurate response and therefore the Department should assign to Sonar the same margin established for the company in the prior administrative review.

In addition, Milliken states that the Department incorrectly adjusted Sonar's reported CV costs to reflect only subject merchandise. Thus, if the Department accepts Sonar's response, Milliken argues that the Department should modify the adjustment to Sonar's CV costs by correcting the errors it alleges the Department made in adjusting Sonar's CV for the preliminary results.

Department's Position: Milliken indicated for the first time in May 1996 that it was not properly served with Sonar's questionnaire response and that the alleged improper service should be a basis on which the Department should disregard its calculation of the dumping margin. Milliken's notification of alleged improper service was more than six months after the deadline passed for respondent to submit its response. The burden rested on Milliken to inform the Department of improper service at or around the time the responses were due to the Department, as the Department has no other way to become aware of an alleged improper service. Indeed, the questionnaire response submitted by Sonar included a certificate of service which indicated to the Department that it had been properly served. Even if Milliken had, on a timely basis, succeeded in establishing on the record that it had, in fact, been improperly served, the Department would not have been precluded from accepting the submission at issue. *See Color Television Receivers, Except for Video Monitors, From Taiwan; Final Results of Antidumping Duty Administrative Review*; 56 FR 31378 (July 10, 1991) (wherein petitioners argued that they were improperly served comments by respondents; the Department accepted the comments, and, noting that they had been filed with the Department on a timely basis, permitted petitioner, which had notified the Department in a timely manner of the improper service, to have extra time to file its comments). Therefore, because the record indicates that Sonar's questionnaire response was served properly on Milliken and because Milliken did not inform the Department in a timely manner of the alleged defective service, we have relied upon the record and have concluded that Sonar's questionnaire response was, in fact, served on Milliken properly and timely.

Regarding Milliken's contention that the CV worksheet reported in Sonar's response does not reconcile with the CV statement submitted with the audited financial statements in the company's original response, in a supplemental questionnaire prior to issuance of the preliminary results, we asked Sonar to explain certain inconsistencies. In our supplemental questionnaire, consistent with section 782 of the Act, we requested that Sonar clarify and correct certain deficiencies in its original response. Pursuant to this request, Sonar submitted, in a timely manner, further information concerning most of the deficiencies in the original questionnaire response.

We indicated in our preliminary results that we were unable to incorporate Sonar's supplemental response into the calculations for the preliminary results because of the statutory due date. Therefore, in our preliminary results, while the company originally calculated CV using a factor representative of all merchandise produced and exported, we adjusted the CV worksheet to reflect, as closely as we could determine, the sales of subject merchandise. These adjustments are the concern of Milliken's comments.

Since issuance of the preliminary results, we have examined Sonar's supplemental response. Sonar indicated in the supplemental response that the expenses it reported in its original CV worksheet pertain solely to subject merchandise. Sonar also indicated in its supplemental questionnaire response that the reported audited financial statements are not limited to subject merchandise, since the company's revenues are derived from sales of kitchen towels and dish towels in addition to shop towels. Therefore, certain items in both the company's CV worksheet and audited financial statements do not match since the company's financial statements also reflect, in addition to the sale of subject merchandise, the sale of other merchandise.

While we are satisfied that the majority of Sonar's response reflects accurately sales of subject merchandise as well as the costs incurred to produce that merchandise, we have found a discrepancy in Sonar's response regarding its reported material costs for producing subject merchandise which it did not explain or clarify in the supplemental response, even though we requested clarification. More specifically, we have identified that Sonar's reported materials costs, a component of CV, is highly inconsistent with its other cost data. As a consequence, we are not confident that we can rely upon Sonar's reported material costs for producing the subject merchandise in determining the final results. Therefore, pursuant to 782(d)(1) of the Act we are disregarding Sonar's reported material costs because Sonar did not adequately explain its cost of materials figure. Accordingly, pursuant to section 776(a) of the Act we are using the facts available to assign the amount for materials cost in our calculation of CV. We are not making an adverse inference in determining these costs pursuant to 776(b) of the Act because we have determined that Sonar acted to the best of its ability to comply with requests for information in this proceeding. As facts available for calculating Sonar's cost of materials for the POR, we used the average cost of materials per kilogram that the four other participating respondents reported in their responses as part of their calculation of CV. In the *Final Determination of Sales at Less Than Fair Value: Canned Pineapple From Thailand*, 60 FR 29553, 29559–62 (June 5, 1995) (*Pineapple*), we used an average of proprietary cost figures of three respondents in assigning facts available for one company. As in *Pineapple*, we find that adequate safeguards to protect the confidentiality of the data are present. In *Pineapple* we used certain proprietary data from three respondents such that no one respondent's proprietary data was vulnerable to disclosure (*see also Final Results of Antidumping Finding Administrative Review: Elemental Sulphur from Canada*, 61 FR 8239 (March 4, 1996)). In this case we are using proprietary data from four respondents, which adequately protects each respondent's proprietary data.

Also, in reviewing the supplemental response, we determined that Sonar had not adjusted its expenses to reflect the production quantity of subject merchandise in the CV worksheet. Based on information on the record, for the final results we have adjusted Sonar's expenses accordingly.

The Department has determined in accordance with section 782(e) of the Act that it is appropriate to consider all of Sonar's other cost data submitted for the record. Section 782(e) of the Act directs the Department to consider all information submitted by an interested party, even if it does not meet all of the applicable requirements established by the Department if: (1) The information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties. Therefore, except with regard to Sonar's reported materials costs and the production quantity of subject merchandise, we have accepted Sonar's CV information for these final results.

With respect to Milliken's concern over Sonar's reported earnings pertaining to other export contract jobs, there is no evidence on the record to demonstrate that the earnings reported are specifically related to the sale of subject merchandise. In its questionnaire response, Sonar refers to a certain export company, in addition to another exporter, as an example of other export contract jobs that Sonar maintains with companies. However, there is no indication on the record to support a finding that Sonar earned revenue from its contracts with these specific exporters. In addition, in its supplemental questionnaire response, Sonar indicated that it has not generated revenue from its contract with the specified exporter. Therefore, because there is no evidence on the record to indicate that the revenue reported in Sonar's financial statements from export contract jobs relates to the sales of subject merchandise and because Sonar has stated that it incurred expenses associated with, rather than revenue from, the export contract job with the specified exporter, we have not made an adjustment in the final margin calculation with respect to any revenue that may have been generated from Sonar's contract with that exporter.

Comment 14: Milliken contends that the Department, after assigning facts available to Sonar, should assign that rate to a certain exporter not currently involved in this review. Milliken states that the record developed in this administrative review demonstrates that, in the production of shop towels, Sonar used materials supplied by this exporter and that Sonar produced subject merchandise for that same exporter. Milliken also asserts that it suspects that the specified exporter has shipped subject merchandise to the United States during the POR. Milliken states that the Department should, in accordance with its policy on establishing rates for new shippers, assign to the specified exporter Sonar's antidumping duty rate.

Department's Position: We disagree with Milliken. Sonar stated in its supplemental questionnaire response that it did not sell any merchandise to the specified company. Sonar also indicated that it only manufactures final products with the use of inputs supplied by this specified company and charges the company for its cost of manufacture. There is nothing on the record to indicate that Sonar sells subject merchandise to or for the specified company.

Comment 15: Milliken asserts that, in its supplemental questionnaire response, Shabnam apparently revised its reported exports of shop towels during the POR by deleting two export sales within the POR. Milliken states that it is not clear from the record whether these sales should be counted as period sales. Milliken contends that the Department must determine in which period these sales were made. Milliken states that if the Department cannot discern in which period these sales occurred then it should reject Shabnam's revision and treat the two deleted export sales as period sales.

Department's Position: In its supplemental questionnaire response, Shabnam indicated that, in its original sales listing (Statement of Shipment), it reported sales that were not made during the POR and, therefore, revised its sales listing by excluding the sales that were not made during the POR. For the final results, we analyzed one of the sales that Shabnam excluded in its revised sales listing. Of the two sales it excluded from its supplemental questionnaire response, we found that one of the two sales was shipped before the POR. We found that the second sale was shipped during the POR. Since the sales reported are export price sales, we use the shipment date to determine whether the sales reported should be included in our analysis. Therefore, we have included in our final margin calculation the sale that was shipped during the POR and have excluded from the final margin calculation the sale that was shipped outside the POR.

Comment 16: Milliken indicates that, in its supplemental questionnaire response, Shabnam reported an amount for interest expense on its balancing, modernization, replacement, and evaluation (BMRE) loan, and that Shabnam stated that the loan amount was lower than the amount originally reported in its questionnaire response. Milliken argues that the Department should continue to use the higher interest rate calculated for the BMRE loan in its final margin calculation because it claims that the lower rate listed in Shabnam's supplemental questionnaire response is not consistent with the amount of interest expense it reported.

Department's Position: As explained in the preliminary results, we were not able to incorporate information provided in respondents' supplemental questionnaire responses for the preliminary results. Therefore, we used an interest rate based on the facts available to calculate Shabnam's interest expense. In our preliminary results, we stated that we would incorporate the information reported in respondents' supplemental questionnaire responses into our final margin calculations. Shabnam indicated in its supplemental questionnaire response the interest rate applicable to the amount borrowed from the BMRE loan. Since Milliken has not provided an adequate explanation as to why we should reject the use of Shabnam's reported interest rate on its BMRE loan, absent verification there is no reason to question the interest rate reported in Shabnam's supplemental questionnaire response. For the final results, we have, therefore, modified the interest expense calculation to take into account the interest rate reported in Shabnam's supplemental questionnaire response.

Comment 17: Milliken states that, in its supplemental questionnaire response, Shabnam indicated that it incurred an expense to build a factory shed in order to upgrade its shop towel production facility. Milliken argues that, while Shabnam indicates that the construction of the factory shed is ''currently halted,'' it does not indicate whether the shed sat idle during the POR. Milliken contends that, given the type of manufacturing methods employed by Shabnam, it is unlikely that the factory shed is not being used in the production of subject merchandise. Milliken argues that the Department should therefore treat the shed as part of the company's plant and equipment used in the manufacture of subject merchandise and include an amount for depreciation expenses in Shabnam's cost of production.

Department's Position: In its supplemental questionnaire response, Shabnam stated that construction of the factory shed is still in progress and therefore is incomplete. Further, even though the construction of the shed is currently halted, there is no evidence on the record to indicate that this partly finished factory shed is usable for production purposes. In addition, there is no evidence on the record to indicate that Shabnam did not already include an amount for depreciation expense for the partly finished factory shed. Given the lack of evidence to support Milliken's claim, there is nothing on the record to warrant an adjustment to Shabnam's depreciation expense in the calculation of COP to account for the partly finished factory shed.

Final Results of Review

We determine the following percentage weighted-average margins exist for the period March 1, 1994, through February 28, 1995:

Manufacturer/Exporter	Margin (Percent)
Eagle Star Mills Ltd.	42.31
Greyfab (Bangladesh) Ltd.	0.70
Hashem International	0.00
Khaled Textile Mills Ltd.	0.00
Shabnam Textiles	0.00
Sonar Cotton Mills (Bangladesh) Ltd.	27.31

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the export price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates established above (unless the rate for a firm is *de minimis, i.e.*, less than 0.5 percent, in which case a cash deposit of zero will be required for that firm); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be 4.60 percent, the ''All Others'' rate established in the *LTFV Final Determination* (57 FR 3996).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 23, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–27859 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–811]

Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On May 6, 1996, the Department of Commerce (the Department) published the preliminary results of its 1994–95 administrative review of the antidumping duty order

on steel wire rope from Korea (61 FR 20233). The review covers 25 manufacturers/exporters for the period March 1, 1994, through February 28, 1995 (the POR). We have analyzed the comments received on our preliminary results and have determined that no changes in the margin calculations are required. The final weighted-average dumping margins for each of the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow, Matthew Rosenbaum, or Kris Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On May 6, 1996, the Department published in the Federal Register the preliminary results of its 1994–95 administrative review of the antidumping duty order on steel wire rope from the Republic of Korea (61 FR 20233) (Preliminary Results). We gave interested parties an opportunity to comment on our preliminary results. We received case briefs from the petitioner, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee), and rebuttal briefs from six respondents including Chung-Woo Rope Co., Ltd. (Chung Woo), Chun Kee Steel & Wire Rope Co., Ltd. (Chun Kee), Manho Rope & Wire Ltd. (Manho), Kumho Wire Rope Mfg. Co., Ltd. (Kumho), Ssang Yong Steel Wire Co., Inc. (Ssang Yong), and Sungjin Company (Sungjin). There was no request for a hearing. The Department has conducted this review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090. Excluded from this review is stainless steel wire rope, *i.e.*, ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under HTS subheading 7312.10.6000. Although HTS subheadings are provided for convenience and Customs purposes, our own written description of the scope of this review is dispositive.

Use of Facts Otherwise Available

We have determined, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Boo Kook Corp., Dong-Il Steel Mfg. Co., Ltd., Hanboo Rope, Jinyang Wire Rope Inc., and Seo Jin Rope because they did not respond to our antidumping questionnaire. We find that these firms have withheld ''information that has been requested by the administering authority.'' Furthermore, we determine that, pursuant to section 776(b) of the Act, it is appropriate to make an inference adverse to the interests of these companies because they failed to cooperate by not responding to our questionnaire.

Where the Department must base the entire dumping margin for a respondent in an administrative review on facts otherwise available because that respondent failed to cooperate, section 776(b) of the Act authorizes the use of an inference adverse to the interests of that respondent in choosing the facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. (*See* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994).)

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (Feb. 22, 1996), where the Department disregarded the highest margin as adverse best information available (BIA) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For a discussion of our application of facts available regarding specific firms, see our response to Comment 1 below.

Analysis of Comments Received

Comment 1: The Committee argues that, for all uncooperative respondents, the Department must apply a rate of 23.5 percent because the rate of 1.51 percent used in the preliminary results undercuts the cooperation-inducing purpose of the facts available provision. The Committee contends that the Department is permitted to draw an adverse inference where a party has not cooperated in a proceeding (citing the SAA at 199). The Committee further asserts that the SAA (at 200) directs the Department, in employing adverse inferences, to consider the extent to which a party may benefit from its own lack of cooperation.

The Committee references the Department's policy of applying an uncooperative rate based on the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the less than fair value (LTFV) investigation or prior administrative reviews; or (2) the highest calculated rate in the current review for any firm.[1] The Committee

[1] The Committee refers to this standard as the first tier in the Department's traditional two-tiered BIA methodology, but points out that the Department has not yet explicitly applied the two-tiered

claims that the Department has used a higher rate than that established under this practice where the uncooperative rate was not sufficiently adverse to induce the respondents to submit timely, accurate and complete questionnaire responses. The Committee cites *Silicon Metal From Argentina: Final Results of Antidumping Duty Administrative Review*, 58 FR 65336, 65337 (December 14, 1993) *(Silicon Metal)*, and *Certain Malleable Cast Iron Pipe Fittings from Brazil; Final Results of Antidumping Duty Administrative Review*, 60 FR 41876 (August 14, 1995) *(Pipe Fittings)* in support of its position that the Department must use a sufficiently adverse uncooperative facts available rate to ensure that the respondent does not obtain a more favorable result by failing to cooperate. The Committee notes that, in these cases, the Department used a higher rate than derived using the standard two-tiered approach to derive the uncooperative rate. The Committee argues that the Department should once again deviate from its standard uncooperative rate determination practice since the dumping margin assigned to uncooperative respondents in this steel wire rope proceeding (1.5 percent) has failed to induce the submission of questionnaire responses by a majority of respondents.

In calculating what it views as an appropriate facts available rate, the Committee compared a price quotation of a single steel wire rope product from a Korean steel wire rope producer subject to this proceeding to the constructed value of this product, derived from various industry sources. The Committee calculates a dumping rate of 23.5 percent using this approach and claims that this rate is a more appropriate ''uncooperative'' rate than the 1.51 percent rate the Department used in the preliminary results. The Committee cites *Sodium Thiosulfate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 59 FR 12934 (March 8, 1993) *(Sodium Thiosulfate)*, in support of calculating a revised facts available rate in light of documented changes in manufacturing costs and import prices. It contends that, from the first quarter of the 1992–94 POR to the last quarter of the 1994–95 POR, the manufacturing costs of steel wire rope increased significantly, while the value of imports of carbon steel wire rope declined. The Committee contends that the increase in manufacturing costs is not reflected in the price of steel wire rope exported to the United States and that this is indicative of continuing sales of steel wire rope at less than fair market value.

Department's Position: We disagree with the Committee and find that reliance on petitioner-supplied data as a basis for facts available would be inappropriate in the context of this review. The Department has broad discretion in determining what constitutes facts available in a given situation. *Krupp Stahl AG et al.* v. *United States*, 822 F. Supp 789 (CIT 1993) at 792; *see also Allied-Signal Aerospace Co. v. United States*, 996 F.2d. 1185 (Fed. Cir. 1993) at 1191, which states ''[b]ecause Congress has 'explicitly left a gap for the agency to fill' in determining what constitutes the [best information available], the ITA's construction of the statute must be accorded considerable deference,'' citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 833–44 (1984).

In any given review, a respondent will have knowledge of the antidumping rates from the investigation and past reviews but not of the rates that will be established in the ongoing review. Because under our facts available policy we consider the highest rate from the current review as one possible source of facts available, potentially uncooperative respondents will generally be less able to predict their facts available rate as the number of participants in the ongoing review increases. Thus, the facts available methodology induces respondents to participate and receive their own known rates as opposed to a potentially much higher unknown rate. Accordingly, this uncertainty in the facts available margin rate which may be selected satisfies the cooperation-inducing function of the facts available provision in this case.

In addition, respondents have an incentive to respond to our request for information because of the possibility of eventual revocation of the antidumping duty order with respect to the company. A respondent that does not participate in the administrative review is not eligible for revocation. Hence, a further reason the rate assigned to the uncooperative respondents in this review may be considered adverse is because it results in respondents remaining subject to the order without eligibility for revocation.

We recognize that there are instances in which the uncooperative rate resulting from our standard methodology may not induce respondents to cooperate in subsequent segments of the proceeding. The few cases in which we have not relied on this approach have involved an extremely limited number of participants, and therefore a consequently small number of rates available for use as a basis for the uncooperative rate.[2] For instance, in *Sodium Thiosulfate,* we used information supplied by the petitioner to establish the uncooperative rate for the only respondent that had shipments of subject merchandise during the POR. Similarly, in *Silicon Metal,* we resorted to petitioner-supplied data where we had a calculated rate for only one firm: ''[i]n this instance, we have only Andina's rate from the LTFV investigation * * *. Because Andina's rate is also the 'all other' rate, Silarsa would be assured a rate no higher than Andina's, *the only respondent who cooperated fully with the Department in this administrative review.* The use of the uncooperative BIA methodology, *in this instance,* restricts the field of potential BIA rates *to the rate established for one firm.'' Silicon Metal,* at 65336 and 65337 (emphasis added).

Our determination in *Pipe Fittings* is a further example of a situation in which the circumstances of the case clearly demonstrated that the uncooperative rate was not sufficient to induce the respondent to cooperate. In *Pipe Fittings,* we applied a petition-based rate to a non-responsive company that was the only company to have ever been investigated or reviewed: ''[we] have only calculated one margin, which was in the less-than-fair-value (LTFV) investigation. Due to the unusual situation, we have determined to use as BIA the simple average of the rates from the petition * * *. In not responding to our requests for information, Tupy could be relying upon our normal BIA practice to lock in a rate that is capped at its LTFV rate'' (*see Pipe Fittings* at 41877–78).

The concern in such cases with respect to the uncooperative rate methodology is that the lack of past rates, as well as the small number of participants in the current review, could allow a respondent in such a review to

methodology to administrative reviews initiated under the URAA. We note that our practice regarding the derivation of the dumping rate for uncooperative respondents has not changed for reviews conducted pursuant to URAA procedures. *(see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.: Preliminary Results of Antidumping Duty Administrative Reviews*, 61 FR 35713, 35715 (July 8, 1996)).

[2] As noted, although we have explained our practice in terms of a two-tiered methodology in pre-URAA reviews, the cases where we deviated from this approach, as cited by the Committee, involved first-tier, uncooperative respondents, and our practice regarding the derivation of the dumping margin assigned to uncooperative companies has not changed.

manipulate the proceeding by choosing not to comply with our requests for information. In such cases the cooperation-inducing function of the facts available provision of the Act may not be achieved by use of the uncooperative rate methodology, in which case the Department will resort to alternative sources in determining the appropriate rate for uncooperative respondents.

The cases cited by the Committee in support of its position establish only that we will consider, on a case-by-case basis as appropriate, petitioner-supplied data in situations involving a number of calculated rates insufficient to induce cooperation by respondents in the proceeding. In those cases, we did not have rates for more than one company and therefore determined that the use of a BIA rate higher than the highest rate in the history of the case was appropriate to encourage future cooperation.

Because we have calculated rates from three companies in the LTFV final determination, eight companies in the first review, and six companies in this review, the concern over potential manipulation of antidumping rates cited in *Sodium Thiosulfate, Silicon Metal,* and *Pipe Fittings* does not exist in the present case. The lack of alternative information and the substantial amount of primary information on the record lead us to conclude that the Committee's information is inferior to the primary information. Therefore, we are satisfied that selection of the highest of these rates is appropriate for facts available for this review, is consistent with our practice, and is sufficiently adverse.

Comment 2: The Committee contends that the Department failed to adjust Ssang Yong's home market price for ''other bank charges'' and differences in merchandise (DIFMER). The Committee also contends that the Department failed to deduct international freight and marine insurance in calculating Ssang Yong's U.S. price (USP).

Department's Position: We disagree with the Committee. We appropriately adjusted for other bank charges and differences in merchandise in calculating normal value and for international freight and marine insurance in calculating USP. When disclosing the materials used in the preliminary results, we inadvertently attached Sung Jin's cover page to Ssang Yong's computer program. Although we did not make these adjustments in Sun Jin's program (because they were not appropriate for that company), we did make such adjustments in Ssang Yong's program.

Comment 3: The Committee states that the Department correctly rejected claims by Chung Woo, Ltd., Kumho and Ssang Yong for duty drawback because these companies did not demonstrate the requisite connection between imports for which they paid duties and exports of steel wire rope. The Committee argues that these respondents failed to meet the requirements of the Department's two-pronged test for determining whether a party is entitled to an adjustment to USP for duty drawback because they have not shown that: (1) The import duty and the rebate received under the ''simplified'' Korean drawback program are directly linked, and (2) there were sufficient raw material inputs to account for duty drawback received on exports of steel wire rope. The committee claims that this test has been upheld by the Court of International Trade, citing *Far East Machinery Co.* v. *United States,* 12 CIT 972, 699 F. Supp. 309 (1988).

Respondents argue that the duty drawback amount received is tied directly to the amount of the export sales on which it is based and that this amount constitutes the rebate of a tax imposed directly upon the foreign like product, with in the meaning of Section 773(a)(6)(iii) of the Act. Respondents urge the Department to adjust USP for their claimed duty drawback amounts.

Department's Position: We agree with the Committee and have not granted the adjustment for the simplified duty drawback amounts received by Chung Woo, Kumho, and Ssang Yong. As we stated in the preliminary results, we did not adjust the USP for duty drawback for respondents that reported it using the simplified method.

As noted by the Committee, we apply a two-pronged test to determine whether a respondent has fulfilled the statutory requirements for a duty drawback adjustment (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews,* 60 FR 10900, 10950 (February 28, 1995)). Section 772(c)(1)(B) of the Act provides for an upward adjustment to USP for duty drawback on import duties which have been rebated (or which have not been collected) *by reason* of the exportation of the subject merchandise to the United States. In accordance with this provision, we will grant a duty drawback adjustment if we determine that (1) import duties and rebates are directly linked to and are dependent upon one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. The CIT consistently has accepted this application of the law. *See Far Eastern Machinery,* 688 F. Supp. at 612, *aff'd. on remand,* 699 F. Supp. at 311; *Carlisle Tire & Rubber Co.* v. *United States,* 657 F. Supp. 1287, 1289 (1987); *Huffy Corp.* v. *United States,* 10 CIT 215–216, 632 F. Supp.

The Department's two-pronged test meets the requirements of the statute. The first prong of the test requires the Department ''to analyze whether the foreign country in question makes entitlement to duty drawback dependent upon the payment of import duties.'' *Far East Machinery,* 699 F. Supp. at 311. This ensures that a duty drawback adjustment will be made only where the drawback received by the manufacturer is contingent on import duties paid or accrued. The second prong requires the foreign producer to show that it imported a sufficient amount of raw materials (upon which it paid import duties) to account for the exports, based on which it claimed rebates. *Id.*

The respondents that reported duty drawback under the Korean simplified method fail both prongs of this test. With respect to the first criterion, these respondents stated in their rebuttal brief that the Korean government determines the simplified drawback amount using average import duties paid by companies that claimed duty drawback through the individual reporting method. (Companies that claim drawback using the individual, not simplified, reporting method must provide information to the government regarding actual import duties paid on inputs used in the production of the exported merchandise for which they claim drawback.) Accordingly, unlike companies that claimed drawback using the individual reporting method (see Comment 4, below), the companies that used the simplified reporting method were unable to demonstrate a connection between payment of import duties and receipt of duty drawback on exports of steel wire rope. Such companies also fail the second prong of our test because they did not demonstrate that they had sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. Therefore we have not adjusted USP for drawback claimed by Chung Woo, Kumho, and Ssang Yong.

Comment 4: The Committee argues that the Department should not adjust the USP for duty drawback claimed by Chun Kee and Manho. It claims that, even though these companies claim that they use the individual duty drawback method, neither company demonstrated that it has fulfilled the second prong of the Department's test by showing that there were sufficient imports of raw materials to account for the duty drawback received on the exports of the subject merchandise. The Committee contends that the Department's questionnaire requires respondents to explain how duty drawback is calculated and to provide worksheets in support of the narrative response. The Committee claims that neither respondent made any attempt to demonstrate that there were sufficient raw material imports to account for the duty drawback received on the exports of the manufactured product, nor did respondents provide any calculations in support of their claimed adjustment aside from listing the amount of duty drawback received.

Respondents contend that the Department verified in a prior review the system under which duty drawback was received and that they accurately responded to the Department's questionnaires in the present review. They claim that they answered all of the questions regarding duty drawback, and, if the Committee believed that the responses of both companies were inadequate, the Committee should have raised the issue prior to the issuance of the preliminary results of review.

Department's Position: We disagree with the Committee. We are satisfied that, under the individual method of applying for duty drawback, Korean companies are required to provide adequate information that shows that they had sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. This satisfies the second prong of the duty drawback test as mentioned above and is consistent with our practice in the preliminary and final results of the first review. *See Preliminary Results* at 14421, 14422 and *Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 60 FR 63499, 63506 (December 11, 1995). In addition, we are satisfied that under the individual duty drawback method Korea makes entitlement to duty drawback dependent upon the payment of import duties, which satisfies the first prong of the duty drawback test.

Comment 5: The Committee contends that the Department should not adjust Sung Jin and Ssang Yong's home market prices for credit expenses. The Committee claims that Sung Jin failed to provide adequate documentation in response to the Department's initial and supplemental requests for information regarding this expense. Specifically, the Committee provides three reasons to support its argument that Sung Jin's response was insufficient to support the claimed adjustment, as follows: (1) Sung Jin failed to provide any documentary support for the balance of short-term borrowing for October 1994 as required by the Department; (2) the sample documents provided by Sung Jin in support of the interest paid refer to only one of the banks to which Sung Jin paid interest; and (3) there is no documentary evidence in support of the interest paid or the balance of short-term borrowing except for one month in 1994.

The Committee claims that Ssang Yong failed to: (1) Provide any documentary support for its cumulative daily balance; (2) provide worksheets describing how it calculated each customer-specific collection period; and (3) report the average collection period for certain home market customers for which a home market credit expense was claimed. The Committee cites *Sonco Steel Tube Div., Ferrum, Inc. v.* United States, 12 CIT 745, 751, 694 F. Supp. 959, 964 (1988), quoted in *NSK Ltd.* v. *United States,* 17 CIT 1185, 1188, 837 F. Supp. 437 (1993), in support of its argument that the burden of demonstrating entitlement to a circumstance-of-sale adjustment is on the party requesting the adjustment.

Respondents assert that both Sung Jin and Ssang Yong responded fully to the Department's questionnaire and that the Department decided correctly that the responses were adequate. They claim that they gave details concerning their home market credit expense as requested and that the Department acknowledged their validity implicitly by accepting the information provided and using it in its preliminary results of review.

Department's Position: We disagree with the Committee and have accepted respondents claims for an adjustment to home market prices for credit expenses. Both companies responded adequately to our initial and supplemental questionnaires regarding this expense.

Our initial questionnaire requested an explanation of the calculation of the credit expense, including the source of the short-term interest rates used in this calculation. Sung Jin provided a general explanation of the credit expense and, regarding the short-term interest used in this calculation, provided the loan balance and interest payments for each month of 1994 (Sung Jin calculated its POR-average short-term rate by dividing interest paid over loans received). In our supplemental questionnaire, we asked Sung Jin to provide further information regarding the source of the interest rates used in calculating this expense. Sung Jin provided a sample of source documentation to back up its calculation of the short-term interest rate. Specifically, the company provided the names of the banks from which they borrowed during one of the POR months (October 1994), as well as a sample bank statement.

We consider this information provided by Sung Jin to be responsive to our requests for information. We did not ask Sung Jin to provide all backup documentation to support its calculation of its short-term interest rate but instead requested that the company provide the source of its calculated rate. In Sung Jin's case, this source is the monthly loan balances and interest payments made by the company during 1994. Sung Jin appropriately provided each monthly loan balance and interest payment, and it provided source documentation regarding one of the POR months. In addition, Sung Jin adequately explained its overall calculation of its credit expense.

For Ssang Yong, we are also satisfied that it provided adequate information regarding the calculation of its credit expense. While, as the Committee argued, Ssang Yong did not provide source documents regarding its cumulative daily loan balance and interest incurred (which Ssang Yong used to calculate its short-term interest rate), we did not ask for backup documentary support for its cumulative daily balance but instead asked for the source of the interest rate, which it did provide. With respect to the customer-specific average collection period, Ssang Yong provided such periods for most of its customers and provided a detailed breakout of the calculation of this period for one customer. The calculation methodology Ssang Yong used was the same for each customer. We are satisfied that Ssang Yong provided accurate responses to our requests for information.

Comment 6: The Committee contends that the Department erred in indicating that Myung Jin had no individual rate from any prior segment of this proceeding. It claims that, in the course of assigning Myung Jin a no-shipments rate, the Department mistakenly stated that Myung Jin has no individual rate from any segment of this proceeding. The Committee asserts that Myung Jin has a prior rate of 1.51 percent from the 1992–1994 administrative review and that, in accordance with Department precedent, a respondent with no shipments during the POR should receive the same rate that it most recently received in a previously completed segment of the proceeding.

Department's Position: We agree with the Committee that Myung Jin previously received a rate of 1.51 percent. This is the rate assigned to it in the 1992–1994 administrative review and remains the rate applicable to Myung Jin, given that it did not make shipments of subject merchandise to the United States during the POR.

Final Results of Review

We determine the following percentage weighted-average margins exist for the period March 1, 1994, through February 28, 1995:

Manufacturer/exporter	Margin (percent)
Atlantic & Pacific	1.51
Boo Kook Corporation	1.51
Chun Kee Steel & Wire Rope Co., Ltd.	0.01
Chung Woo Rope Co., Ltd.	0.04
Dae Heung Industrial Co.	(1)
Dae Kyung Metal	1.51
Dong-Il Metal	1.51
Dong-Il Steel Manufacturing Co., Ltd	1.51
Dong Young Rope	1.51
Hanboo Wire Rope, Inc.	1.51
Jinyang Wire Rope, Inc	1.51
Korea Sangsa Co.	(1)
Korope Co.	1.51
Kumho Rope	0.01
Kwang Shin Ind.	1.51
Kwangshin Rope	1.51
Manho Rope & Wire, Ltd.	0.00
Myung Jin Co.	(2) 1.51
Seo Hae Ind.	1.51
Seo Jin Rope	1.51
Ssang Yong Steel Wire Co., Ltd	0.06
Sung Jin	0.00
Sungsan Special Steel Processing Inc.	(1)
TSK (Korea) Co., Ltd.	(1)
Yeonsin Metal	0.18(2)

[1] No shipments subject to this review. The firm has no individual rate from any segment of this proceeding.

[2] No shipments subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates established above (except that, if the rate for a firm is *de minimis, i.e.*, less than 0.5 percent, a cash deposit of zero will be required for that firm); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be 1.51 percent, the ''All Others'' rate established in the *LTFV Final Determination* (58 FR 11029).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 22, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–27858 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–054, A–588–604]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Correction; Notice of Opportunity to Request Administrative Review of Antidumping Finding and Antidumping Duty Order.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of an investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22 and 355.22) that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation. On October 1, 1996, the Department published in the Federal Register its ''Notice of Opportunity to Request Administrative Review'' and invited interested parties to request an administrative review of the listed antidumping and countervailing duty orders, findings or suspended investigations (61 FR 51259). However, the listed cases did not include the antidumping finding on tapered roller bearings (TRBs), four inches or less in outside diameter, and components thereof, from Japan (A–588–054).

Not later than October 31, 1996, interested parties may request administrative review of either the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof or the antidumping duty order on TRBs and parts thereof from Japan (A–588–604) for the period October 1, 1995 through September 30 1996.

In accordance with sections 353.22(a) of the Department's regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. Section 353.22(a)(1) requires that an interested party must specify the individual producers or resellers for which they are requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping and Countervailing Duty Enforcement, Attention: Sheila Forbes, in Room 3064 of the main Commerce building. Further, in accordance with section 353.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of ''Initiation of Antidumping Duty Administrative Review,'' for requests received by October 31, 1996. If the Department does not receive by October 31, 1996 a request for review of entries covered by the order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping duties on those entries at a rate equal to the cash deposit of, or bond for, estimated antidumping duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption, and to continue to collect the cash deposit previously ordered.

This notice is not required by the statute, but is published as a service to the international trading community.

Dated: October 23, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 96–27770 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Cornell University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–087. *Applicant:* Cornell University, Ithaca, NY 14853. *Instrument:* Scanning Tunneling Microscope, Model JSTM–4500. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 61 FR 46783, September 5, 1996.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) an ultra-high vacuum STM chamber operable to 2×10^{-8} Pa or less and (2) resolution of 0.14 nm (horizontal) with drift ≤0.05 nm/s at a sample temperature of 30K. A National Science Foundation engineering research center advises that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–27774 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Mayo Foundation; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–084. *Applicant:* Mayo Foundation, Rochester, MN 55905. *Instrument:* IR Mass Spectrometer with Gas Sampling Inlet, Model TracerMAT. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 61 FR 46782, September 5, 1996.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) a magnetic sector analyzer with three Faraday collectors tuned to isotopically labelled CO_2, (2) an autosampler gas chromatograph designed specifically to separate CO_2 from other gases in breath samples and (3) a precision of 0.3 per mil. Two domestic manufacturers of similar equipment advise that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–27861 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institutes of Health, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–085. Applicant: National Institutes of Health, Bethesda, MD 20892. Instrument: Electron Microscope, Model CM 120. Manufacturer: Philips, The Netherlands. Intended Use: See notice at 61 FR 46782, September 5, 1996. Order Date: March 5, 1996.

Docket Number: 96–088. Applicant: The University of Texas at Austin, Austin, TX 78712. Instrument: Electron Microscope, Model JEM–2010. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 61 FR 46783, September 5, 1996. Order Date: September 30, 1993.

Docket Number: 96–093. Applicant: The Ohio State University, Columbus, OH 43210. Instrument: Electron Microscope, Model CM300. Manufacturer: Philips, The Netherlands. Intended Use: See notice at 61 FR 49113, September 18, 1996. Order Date: December 5, 1995.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–27773 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–080R. Applicant: Santa Rosa Outpatient Rehabilitation Hospital, 2829 Babcock Road, San Antonio, TX 78229. Instrument: 3–Dimensional Motion Analyzer System, Model VICON 370. Manufacturer: Oxford Metrics, Ltd., United Kingdom. Intended Use: Original notice of this resubmitted application was published in the Federal Register of September 19, 1995.

Docket Number: 96–102. Applicant: Yale University, Magnetic Resonance Center, 333 Cedar Street, P. O. Box 208043, New Haven, CT 06520. Instrument: SIMS IVS Console. Manufacturer: Surrey Medical Imaging Systems Ltd., United Kingdom. Intended Use: The instrument will be used to develop and apply magnetic resonance methods for imaging blood flow, tissue perfusion, intra and extracellular swelling, alterations in cellular membranes, tissue fuel sources, metabolic fuel consumption, enzymatic regulation of metabolism by using an existing 4.7 Tesla magnetic resonance spectrometer. Application accepted by Commissioner of Customs: September 27, 1996.

Docket Number: 96–103. Applicant: Stevens Institute of Technology, Castle Point on Hudson, Hoboken, NJ 07030. Instrument: Stopped-Flow/Scanning Spectrometer, Model SX.18MV. Manufacturer: Applied Photophysics Ltd., United Kingdom. Intended Use: The instrument will be used for studies of the kinetics of human alcohol dehydrogenase isoenzymes from the liver and stomach and for studies of the kinetics of a human liver cytochrome P450 isoenzyme that metabolizes ethanol. Application accepted by Commissioner of Customs: October 1, 1996.

Docket Number: 96–104. Applicant: University of Georgia, D W Brooks Drive, Warnell School of Forest Resources, Building #4, Room 102, Athens, GA 30602. Instrument: Environmental Process Control Laboratory. Manufacturer: Minworth Systems Ltd., United Kingdom. Intended Use: The instrument will be used to monitor the transport and biochemical transformation of carbon-, nitrogen-and phosphorus-bearing materials in water and the behavior of the microbiological organisms responsible for these biochemical transformations. The goal of the research is to support the development and evaluation of computer simulation models of the behavior of the pollutants in the natural environment and in treatment systems, with a view to elaborating better ways of operating such systems and of forecasting the consequences of alternative schemes for managing and protecting the natural environment. In addition, the instrument will be used in a graduate-level course to teach students how to use it. Application accepted by Commissioner of Customs: October 1, 1996.

Docket Number: 96–105. Applicant: Arizona Science Center, 147 E. Adams Street, Phoenix, AZ 85004–2394. Instrument: Interactive Imaging System, Model Magicam. Manufacturer: Optech International Ltd., New Zealand. Intended Use: The instrument will be used as an educational tool in geology and biology exhibit halls to allow the visitor to use the system to further explore provided examples in each of the galleries. Application accepted by Commissioner of Customs: October 2, 1996.

Docket Number: 96–106. Applicant: The Johns Hopkins University, Department of Chemistry, 3400 Charles Street, Baltimore, MD 21218. Instrument: EPR Spectrometer, Model EMX 10/2.7. Manufacturer: Bruker Instruments, Inc., Germany. Intended Use: The instrument will be used for electron spin resonance measurements at room and variable temperatures during investigations that include characterization of paramagnetic centers in biomolecules, organic compounds, inorganic coordination compounds and solid state materials, identification of photo- and redox-active sites and elucidation of reaction mechanisms. In addition, the instrument will be used for educational purposes in chemistry laboratory courses. Application accepted by Commissioner of Customs: October 2, 1996.

Docket Number: 96–108. Applicant: Centers for Disease Control & Prevention, Mailstop G–36, 1600 Clifton Road, N. E., Atlanta, GA 30333. Instrument: Mass Spectrometer, Model Reflex II. Manufacturer: Bruker Analytical, Germany. Intended Use: The instrument will be used to assess the molecular weight of the intact biopolymers and of synthetic intermediates employed in the syntheses and fragments generated from the biopolymers. Together, this information provides important evidence for the correct structure of the synthetic biotechnology products.

Application accepted by Commissioner of Customs: October 7, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–27771 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

The University of Texas, et al. Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–083. Applicant: The University of Texas at Austin, Austin, TX 78712. Instrument: Gas Composition Analyzer, Model Epison III. Manufacturer: Thomas Swan & Co., Ltd., United Kingdom. Intended Use: See notice at 61 FR 46782, September 5, 1996. Reasons: The foreign instrument provides non-invasive control of gas mixture ratios in a chemical vapor deposition system using an ultrasonic technique requiring no physical contact with the gas stream. Advice received from: The Center for Interfacial Engineering, National Science Foundation, October 4, 1996.

Docket Number: 96–086. Applicant: The University of Tennessee, Knoxville, TN 37996–1410. Instrument: IR Mass Spectrometer, Model DELTA^{plus}. Manufacturer: Finnigan MAT, Germany. *Intended Use:* See notice at 61 FR 46782, September 5, 1996. Reasons: The foreign instrument provides: (1) a dual viscous flow inlet system configured for light isotope analysis of H/D, $^{13}C/^{12}C$, $^{18}O/^{16}O$, $^{15}N/^{14}N$ and other species, (2) integrated peripheral devices enabling automated operation and (3) absolute sensitivity in molecules of CO_2/ion = ≤1500. Advice received from: National Institutes of Health, September 10, 1996.

Docket Number: 96–089. Applicant: Northern Kentucky University, Highland Heights, KY 41099–1905. Instrument: Rapid Kinetics Apparatus, Model SFA–20. Manufacturer: Hi-Tech Ltd., United Kingdom. Intended Use: See notice at 61 FR 46783, September 5, 1996. Reasons: The foreign instrument provides: (1) a bulkhead closure, non-return valve and an anaerobic enclosure to permit rapid mixing in anaerobic environments and (2) remote triggering interface and cable to initiate data acquisition. Advice received from: National Institutes of Health, September 10, 1996.

Docket Number: 96–090. Applicant: National Renewable Energy Laboratory, Golden, CO 80401–3393. Instrument: TOF Secondary Ion Mass Spectrometer. Manufacturer: ION-TOF GmbH, Germany. Intended Use: See notice at 61 FR 46783, September 5, 1996. Reasons: The foreign instrument provides a horizontal sample holder at ground potential and depth resolution to 1 nm. Advice received from: National Institutes of Health, September 10, 1996.

The Center for Interfacial Engineering, National Science Foundation and the National Institutes of Health advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–27772 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–107. *Applicant:* University of Minnesota, Department of Geology and Geophysics, 310 Pillsbury Drive SE, Minneapolis, MN 55455. *Instrument:* Mass Spectrometer, Model MAT 262. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to analyze the isotopic composition of natural materials that constitute the results of natural phenomena that have occurred in the earth's past. It will be used to determine the isotopic compositions of O, C, U, Th, Pb, Sr and Nd and the concentrations of U, Th, Pa, Pb, Sr, Nd, Sm, Rb and Ca in natural rocks, minerals, fossils and waters. *Application accepted by Commissioner of Customs:* October 4, 1996.

Docket Number: 96–109. *Applicant:* University of Arkansas for Medical Sciences, 4301 W. Markham, Little Rock, AR 72205. *Instrument:* Rapid Kinetics Accessory, Model SFA–20. *Manufacturer:* Hi-Tech Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the catalyzed reduction of a series of nitroaromatic compounds using several bacterial and mammalian nitroreductases to determine the kinetic constants K_m and k_{cat}. In addition, the instrument will be used for educational purposes in the courses Introduction to Patient Monitoring (Bioph. Sci. 4224) and Special Methods in Biophysics (PHYO 603). *Application accepted by Commissioner of Customs:* October 8, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–27860 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech Republic

October 25, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in the Czech Republic and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Information regarding the 1997 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 25, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in the Czech Republic and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following limits:

Category	Twelve-month restraint limit
410	1,566,038 square meters.
433	6,150 dozen.
435	4,047 dozen.
443	74,977 numbers.
624	1,928,666 square meters.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–27851 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Poland

October 25, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in Poland and exported during the period January 1, 1997 through December 31, 1997 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1997 period. The limit for Category 443 has been reduced for carryforward applied in 1996.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Information regarding the 1997 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 25, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
335	181,460 dozen.
338/339	1,954,182 dozen.
410	2,647,085 square meters.
433	18,694 dozen.
434	10,196 dozen.
435	13,342 dozen.
443	209,178 numbers.
611	5,585,472 square meters.
645/646	286,148 dozen.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–27852 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

October 25, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in the Slovak Republic and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits. The limit for Category 443 has been reduced for carryforward applied to the 1996 limit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Information regarding the 1997 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 25, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Slovak Republic and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997 in excess of the following limits:

Category	Twelve-month restraint limit
410	408,964 square meters.
433	11,423 dozen.
435	17,253 dozen.
443	88,828 numbers.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–27850 Filed 10–29–96; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Safety Standard for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the Federal Register of April 2, 1996 (61 FR 14557), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the Safety Standard for Cigarette Lighters (16 CFR Part 1210). By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for reinstatement of approval of that collection of information without change through December 31, 1999.

The Safety Standard for Cigarette Lighters requires disposable and novelty lighters to be manufactured with a mechanism to resist operation by children younger than five years of age. Certification regulations implementing the standard require manufacturers and importers to submit to the Commission a description of each model of lighter, results of prototype qualification tests for compliance with the standard, and a physical specimen of the lighter before the introduction of each model of lighter in commerce.

The Commission uses the records of testing and other information required by the certification regulations to determine that disposable and novelty lighters have been tested and certified for compliance with the standard by the manufacturer or importer. The Commission also uses this information to obtain corrective actions if disposable or novelty lighters fail to comply with the standard in a manner which creates a substantial risk of injury to the public.

Additional Information About the Request for Reinstatement of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Cigarette Lighters, 16 CFR Part 1210.

Type of request: Reinstatement of approval without change.

General description of respondents: Manufacturers and importers of disposable and novelty cigarette lighters.

Estimated number of respondents: 45.

Estimated average number of hours per respondent: 174 per year.

Estimated number of hours for all respondents: 7,875 per year.

Comments: Comments on this request for reinstatement of approval of a collection of information should be sent within 30 days of publication of this notice to Victoria Wassmer, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for reinstatement of approval of a collection of information and supporting documentation are available from Carl Blechschmidt, Acting Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: October 25, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–27867 Filed 10–29–96; 8:45 am]

BILLING CODE 6355–01–P

Submission for OMB Review; Comment Request—Requirements for Baby-Bouncers, Walker-Jumpers, and Baby-Walkers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the Federal Register of February 15, 1996 (61 FR 5987), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the requirements for baby-bouncers, walker-jumpers, and baby-walkers in regulations codified at 16 CFR 1500.18(a)(6) and 1500.86(a)(4). By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for reinstatement of approval of that collection of information without change through December 31, 1999.

The regulation codified at 16 CFR 1500.18(a)(6) establishes safety requirements for baby-bouncers, walker-jumpers, and baby-walkers to reduce unreasonable risks of injury to children associated with those products. Those risks of injury include amputations, crushing, lacerations, fractures, hematomas, bruises and other injuries to children's fingers, toes, and other parts of their bodies. The regulation codified at 16 CFR 1500.86(a)(4) requires manufacturers and importers of baby-bouncers, walker-jumpers, and baby-walkers to maintain records for three years containing information about testing, inspections, sales and distribution of these products.

The records of testing and other information required by the regulations allow the Commission to determine if baby-bouncers, walker-jumpers, and baby-walkers comply with the requirements of the regulation codified at 16 CFR 1500.18(a)(6). If the Commission determines that products fail to comply with the regulations, the records required by 16 CFR 1500.86(a)(4) enable the firm and the Commission to: (i) identify specific models of products which fail to comply with applicable requirements; and (ii) notify distributors and retailers in the event those products are subject to recall.

Additional Information About the Request for Reinstatement of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Requirements for Baby-Bouncers, Walker-Jumpers, and Baby-Walkers, 16 CFR 1500.18(a)(6) and 1500.86(a)(4).

Type of request: Reinstatement of approval without change.

General description of respondents: Manufacturers and importers of baby-bouncers, walker-jumpers, and baby-walkers.

Estimated number of respondents: 25.

Estimated average number of hours per respondent: 2 per year.

Estimated number of hours for all respondents: 50 per year.

Comments: Comments on this request for reinstatement of approval of a collection of information should be sent within 30 days of publication of this notice to Victoria Wassmer, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for reinstatement of approval of a collection of information and supporting documentation are available from Carl Blechschmidt, Acting Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: October 25, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–27868 Filed 10–29–96; 8:45 am]

BILLING CODE 6355–01–P

Submission for OMB Review; Comment Request—Flammability Standards for Children's Sleepwear

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the Federal Register of January 19, 1996 (61 FR 1363), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek reinstatement of approval of collections of information in the flammability standards for children's sleepwear and implementing regulations. No comments were received in response to that notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for reinstatement of approval of those collections of information without change through December 31, 1999.

The standards and regulations are codified as the Flammability Standard for Children's Sleepwear: Sizes 0 Through 6X, 16 CFR Part 1615; and the Flammability Standard for Children's Sleepwear: Sizes 7 Through 14, 16 CFR Part 1616. The flammability standards and implementing regulations prescribe requirements for testing and recordkeeping by manufacturers and importers of children's sleepwear subject to the standards. The information in the records required by the regulations allows the Commission to determine if items of children's sleepwear comply with the applicable standard. This information also enables the Commission to obtain corrective actions if items of children's sleepwear fail to comply with the applicable standard in a manner which creates a substantial risk of injury.

Additional Information About the Request for Reinstatement of Approval of Collections of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X, 16 CFR Part 1615; Standard for the

Flammability of Children's Sleepwear: Sizes 7 Through 14, 16 CFR Part 1616.

Type of request: Reinstatement of approval without change.

General description of respondents: Manufacturers and importers of children's sleepwear in sizes 0 through 14.

Estimated number of respondents: 63.

Estimated average number of hours per respondent: 1,650 per year.

Estimated number of hours for all respondents: 103,950 per year.

Comments: Comments on this request for reinstatement of approval of collections of information should be sent within 30 days of publication of this notice to Victoria Wassmer, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for reinstatement of approval of collections of information and supporting documentation are available from Carl Blechschmidt, Acting Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: October 25, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–27869 Filed 10–29–96; 8:45 am]

BILLING CODE 6355–01–P

Submission for OMB Review; Comment Request—Requirements for Electrically Operated Toys and Children's Articles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the Federal Register of December 4, 1995 (60 FR 62077), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children (16 CFR Part 1505). By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for reinstatement of approval of that collection of information without change through December 31, 1999.

The regulations in Part 1505 establish performance and labeling requirements for electrically operated toys and children's articles to reduce unreasonable risks of injury to children from electric shock, electrical burns, and thermal burns associated with those products. Section 1505.4(a)(3) of the regulations requires manufacturers and importers of electrically operated toys and children's articles to maintain records for three years containing information about: (i) material and production specifications; (2) the quality assurance program used; (3) results of all tests and inspections conducted; and (4) sales and distribution of electrically operated toys and children's articles.

The records of testing and other information required by the regulations allow the Commission to determine if electrically operated toys and children's articles comply with the requirements of the regulations in Part 1505. If the Commission determines that products fail to comply with the regulations, this information also enables the Commission and the firm to: (i) identify specific lots or production lines of products which fail to comply with applicable requirements; and (ii) notify distributors and retailers in the event those products are subject to recall.

Additional Information About the Request for Reinstatement of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children, 16 CFR Part 1505.

Type of request: Reinstatement of approval without change.

General description of respondents: Manufacturers and importers of electrically operated toys and children's articles.

Estimated number of respondents: 40.

Estimated average number of hours per respondent: 200 per year.

Estimated number of hours for all respondents: 8,000 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be sent within 30 days of publication of this notice to Victoria Wassmer, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for reinstatement of information collection requirements and supporting documentation are available from Carl Blechschmidt, Acting Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: October 25, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–27873 Filed 10–29–96; 8:45 am]

BILLING CODE 6355–01–P

Submission for OMB Review; Comment Request—Safety Standard for Walk-Behind Power Lawn Mowers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the Federal Register of January 31, 1996 (61 FR 3373), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR Part 1205). By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for reinstatement of approval of that collection of information without change through December 31, 1999.

The Safety Standard for Walk-Behind Power Lawn Mowers establishes performance and labeling requirements for mowers to reduce unreasonable risks of injury resulting from accidental contact with the moving blades of mowers. Certification regulations implementing the standard require manufacturers, importers and private labelers of mowers subject to the standard to test mowers for compliance with the standard, and to maintain records of that testing.

The records of testing and other information required by the certification regulations allow the Commission to determine that walk-behind power mowers subject to the standard comply with its requirements. This information also enables the Commission to obtain corrective actions if mowers fail to comply with the standard in a manner which creates a substantial risk of injury to the public.

Additional Information About the Request for Reinstatement Of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Walk-Behind Power Lawn Mowers, 16 CFR Part 1205.

Type of request: Reinstatement of approval without change.

General description of respondents: Manufacturers, importers, and private labelers of walk-behind power lawn mowers.

Estimated number of respondents: 75.

Estimated average number of hours per respondent: 390 per year.

Estimated number of hours for all respondents: 29,250 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be sent within 30 days of publication of this notice to Victoria Wassmer, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for reinstatement of information collection requirements and supporting documentation are available from Carl Blechschmidt, Acting Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: October 25, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–27874 Filed 10–29–96; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for the Disposal; and Reuse of Marine Corps Air Station El Toro, Santa Ana, California

SUMMARY: Pursuant to the National Environmental Policy Act as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the U.S. Marine Corps intends to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the disposal and reuse of Marine Corps Air Station (MCAS) El Toro. Located in Orange County, MCAS El Toro is north and east of the City of Irvine and west of the City of Lake Forest.

As a result of the 1993 Defense Base Realignment and Closure (BRAC) process, MCAS El Toro was slated for closure by 1999. Orange County was designated as the federally recognized Local Redevelopment Authority for the development of the Community Reuse Plan at MCAS El Toro. Accordingly, Orange County is preparing the Community Reuse Plan simultaneously with an Environmental Impact Report required under the California Environmental Quality Act. An EIS, which is required for the disposal and reuse of MCAS El Toro, is being prepared by the Marine Corps in accordance with NEPA. The Community Reuse Plan will be the basis for the proposed action and the alternatives analyzed in the EIS. The Federal Aviation Administration is a cooperating agency for this EIS.

Environmental issues to be addressed in the EIS include: geological resources, biological resources, water resources, noise, air quality, land use compatibility, cultural resources, socioeconomics, environmental justice, public health and safety, transportation/circulation, aesthetics, utilities, hazardous materials, and solid waste.

The Marine Corps will initiate a scoping process for the purpose of determining the extent of issues to be addressed and identifying the significant issues related to this action. The Marine Corps will hold two public scoping meetings. The first will be on November 13, 1996, beginning at 5:30 pm, at Mission Viejo High School, 25025 Chrisanta Drive, Mission Viejo, California; and the second will be on November 14, 1996, beginning at 7:00 pm at Irvine City Hall, 1 Civic Center Plaza, Irvine, California. These meetings will be advertised in area newspapers.

A brief presentation will precede request for public comment. Marine Corps representatives will be available at these meetings to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment on scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed to: Commanding Officer, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132–5190 (Attn: Mr. Dan Muslin, Code 232). All comments must be received no later than December 6, 1996.

Date: October 24, 1996.

Lawrence L. Larson,

Colonel, U.S. Marine Corps, Head, Land Use and Military Construction Branch, Facilities and Services Division, Installations and Logistics Department, By direction of the Commandant of the Marine Corps.

[FR Doc. 96–27790 Filed 10–29–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 30, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB.

Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 24, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Revision.

Title: Data Sheet for Cancellation of Perkins or National Direct Student Loans Due to Teaching in Low Income Area.

Frequency: Annually.

Affected Public: State Educational Agencies and the Federal Government.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 130.

Abstract: Under the Federal Perkins and National Direct Student Loan Programs, a borrower may have a portion of his/her loan cancelled if they teach at a school which appears on this ED list that shows schools which have a high concentration of students from low-income families.

[FR Doc. 96–27779 Filed 10–29–96; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 29, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 24, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Measuring Classroom Instructional Processes in Secondary Mathematics.

Frequency: One time only.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden

Responses: 400.

Burden Hours: 810.

Abstract: This study will develop and recommend methods for collecting data describing classroom instructional processes in 8–12th grade mathematics classrooms; (2) explore the combined use of questionnaires and related teacher log forms to portray classroom instructional processes; and (3) determine the feasibility of incorporating such methods into NCES surveys or other data collection efforts. The study will collect survey data from 400 randomly sampled secondary mathematics teachers; a subset of 760 members of this group will keep logs on instruction during one semester. Statistical analyses will be conducted on the results to determine which survey and log items provide the most efficient and comprehensive data set for the purpose of portraying instruction in a wide range of settings.

[FR Doc. 96–27778 Filed 10–29–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

In Support of Design, Construction, and Operation of a Pioneer Plant(s) Based on Direct and/or Indirect Conversion Technologies; Financial Assistance Award

AGENCY: U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC).

ACTION: Request for expression of interest.

SUMMARY: The PETC announces that, in support of its' Office of Project Management, Fuel Systems Division, it is soliciting expressions of interest in the above-titled technology. Responses should be limited to 5–10 pages, and should address technical and business areas of interest, desired role in the research activity (i.e., stakeholder, sponsor, user, or developer), experience of the entity and its personnel, and a description of the applicable technology that can result in a pioneer plant.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 921–143, Pittsburgh, PA 15236, Attn.: James W. Huemmerich, Telephone: (412) 892–6597, FAX: (412) 892–6216, E-mail: huemmric@petc.doe.gov.

A complete description of the technology will be posted on the internet at PETC's Home Page (http://www.petc.doe.gov). This is NOT a formal solicitation, is NOT a request for proposals, and is NOT to be construed as a commitment by the Government.

SUPPLEMENTARY INFORMATION:

Objective. Pursuant to 10 CFR 600.8 (a) (2), the Department of Energy seeks expressions of interest only. Issuance of a formal solicitation, and eventual award of contractual instrument(s), is NOT likely to occur.

Eligibility. Interested entities may include state and municipal agencies, technology and process developers, coal producers, equipment suppliers, the oil industry, the transportation sector, power producers, and chemical manufacturers.

Issued in Pittsburgh, PA on October 16, 1996.

Dale A. Siciliano,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 96–27802 Filed 10–29–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald.

DATES: Saturday, November 9, 1996 8:30 a.m. - 12:15 p.m. (public comment session: 11:45 p.m. - 12:00 p.m.).

ADDRESSES: The Alpha Building 10967 Hamilton Cleves Highway, Harrison, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force office (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

8:30 a.m.—Call to Order
8:30–8:45—Chair's Remarks and New Business
8:45–9:30—Committee Chairs' Reports and Silos Update
9:30–10:30—DOE Ten-Year Plan
10:30–10:45—Break
10:45–11:45—Transportation Issues
11:45–12:00—Opportunity for Public Input
12:00–12:15—Wrap-Up
12:15 p.m.—Adjourn

A final agenda will be available at the meeting, Saturday, November 9, 1996.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on October 25, 1996.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–27797 Filed 10–29–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Hanford Site; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Thursday, November 7, 1996: 8:30 a.m.–4:00 p.m.

ADDRESSES: The Tower Inn, 1515 George Washington Way, Richland, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Yerxa, Public Participation Coordinator, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA, 99352.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

November Meeting Topics: The Hanford Advisory Board will receive information on and discuss issues related to: the Hanford Remedial Action Environmental Impact Statement/Comprehensive Land Use Plan, Institutional Controls, Tri-Party Agreement Negotiations on Reactors on the River, and the FY 1997 Budget Allocations, Charter Ammendment Proposal Regarding Hanford Advisory Board Membership, Project Hanford Management Contract, Historical Preservation Activities, Briefing on Columbia River Impact Assessment, and Emerging Issues for Tri-Party Agreement Agencies at Hanford. The Board will also receive updates from various Subcommittees, including updates on: the Columbia River Spent Nuclear Fuel Project, National Equity Dialogue, and the Programmatic Environmental Impact Statement on Fissile Materials/Plutonium Roundtable, Ten-Year Plan, and Vadose Zone Monitoring Under Tanks.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jon Yerxa's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Jon Yerxa, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509)–376–9628.

Issued at Washington, DC, on October 25, 1996.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–27798 Filed 10–29–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy, National Coal Council; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Thursday, November 14, 1996, 9:00 am.

Place: Ritz-Carlton Washington, 2100 Massachusetts Avenue, NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, DC 20585, Telephone: 202/586–3867.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda:

—Call to order and opening remarks by Clifford Miercort, Chairman of the National Coal Council.

—Approve agenda.

—Remarks by the Honorable Hazel R. O'Leary, Secretary of Energy (invited).

—Remarks by Kurt Yeager, President Electric Power Research Institute (invited).

—Report of the Coal Policy Committee.

—Membership to consider draft report entitled ''Consumption Issues Affecting the Role of Coal in Energy and the Environment.''

—Administrative matters.

—Discussion of any other business properly brought before the Council.

—Public comment—10-minute rule.

—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 25, 1996.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–27795 Filed 10–29–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy, Coal Policy Committee, National Coal Council; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Date and Time: Wednesday, November 13, 1996 at 1:30 p.m.

Place: Ritz-Carlton Washington, 2100 Massachusetts Avenue, N.W., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, D.C. 20585, Telephone: 202/586–3867.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the meeting: To report on the status of the consumption issues study and to receive comments and recommendations.

Tentative Agenda:

—Opening remarks by Steven Leer, Chairman of the Coal Policy Committee.

—Approve agenda.

—Remarks by Department of Energy representative (The Honorable Patricia Fry Godley, Assistant Secretary for Fossil Energy (invited).

—Discussion and Consideration of the draft report entitled ''Consumption Issues Affecting the Role of Coal in Energy and the Environment.''

—Discussion of any other business to be properly brought before the Committee.

—Public comment—10-minute rule.

—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 25, 1996.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–27796 Filed 10–29–96; 8:45 am]

BILLING CODE 6450–01–P

Certification of the Radiological Condition of the Aliquippa Forge Site in Aliquippa, Pennsylvania, 1995

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of Certification.

SUMMARY: The Department of Energy (DOE) has completed remedial action to decontaminate the Aliquippa Forge site (hereinafter ''site'') in Aliquippa, Pennsylvania. This site was found to contain quantities of radioactive material from Atomic Energy Commission activities conducted at the former Aliquippa Forge facility, which records indicate operated from 1948 to 1950. Radiological surveys show that the site meets applicable requirements for use without radiological restrictions, and the docket related to cleanup activities is now available.

ADDRESSES:

Public Reading Room, Room 1E–190, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Public Document Room, Oak Ridge Operations Office, U.S. Department of Energy, 200 Administration Road, Oak Ridge, Tennessee 37831.

FOR FURTHER INFORMATION CONTACT: Mr. John Lehr, Acting Director, Office of Eastern Area Programs, Office of Environmental Restoration (EM–42), U.S. Department of Energy, Germantown, Maryland 20874, (301) 903–2328 Fax: (301) 903–2385.

SUPPLEMENTARY INFORMATION:

The Department of Energy (DOE), Office of Environmental Management, Office of Eastern Area Programs, Formerly Utilized Sites Remedial Action Program (FUSRAP) Team, has conducted remedial action at the Aliquippa Forge site in Aliquippa, Pennsylvania, as part of FUSRAP. The objective of the program is to identify and remediate or otherwise control sites where residual radioactive contamination remains from activities carried out under contract to the Manhattan Engineer District/Atomic Energy Commission (MED/AEC) during the early years of the nation's atomic energy program or from commercial operations causing conditions that Congress has authorized DOE to remedy. In August 1983, the Aliquippa Forge site was designated for cleanup under FUSRAP.

The Aliquippa Forge facility was originally owned by the Universal Cyclops Specialty Steel Division of the Cyclops Corporation and is currently owned by the Beaver County Corporation for Economic Development. From July 1948 to late 1949, the Vulcan Crucible Steel Company operated a uranium-rolling process for AEC in Building 3 of the facility. Uranium billets were sent to the Vulcan facility where they were formed into rods; finished rods were boxed and shipped to other AEC facilities. The site was decontaminated to then-applicable guidelines in 1950 following completion of AEC operations.

In 1978, a radiological survey performed in and around Building 3 identified radioactive contamination exceeding current DOE guidelines for release of the property for use without radiological restrictions. DOE conducted an interim remedial action at the Aliquippa Forge site in 1988 to allow restricted use of the facility. Final remedial action was conducted at the site from June 1993 to September 1994.

Post-remedial action surveys have demonstrated, and DOE has certified, that the site is in compliance with DOE radiological decontamination criteria and standards. The standards are established to protect members of the general public and occupants of the property and to ensure that reasonably foreseeable future use of the site will result in no radiological exposure above current radiological guidelines. Accordingly, this site is released from the FUSRAP program.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays) in the DOE Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Copies of the certification docket will also be available in the DOE Public Document Room, U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge, Tennessee 37831, and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

DOE, through the Oak Ridge Operations Office, Former Sites Restoration Division, has issued the following statement:

Statement of Certification: Aliquippa Forge Site in Aliquippa, Pennsylvania

DOE, Oak Ridge Operations Office, Former Sites Restoration Division, has reviewed and analyzed the radiological data obtained following remedial action at the Aliquippa Forge site (described as parcels 08, 001, and 0100 in the Aliquippa, Pennsylvania, assessor's office). Based on analysis of all data collected, including post-remedial action surveys, DOE certifies that any residual contamination at the site falls within current guidelines for use without radiological restrictions. This certification of compliance provides assurance that reasonably foreseeable future use of the site will result in no radiological exposure above current radiological guidelines established to protect members of the general public as well as occupants of the site.

Property owned by: Beaver County Corporation for Economic Development, 100 First Street, Aliquippa, Pennsylvania 15001.

Issued in Washington this 14th day of October, 1996.

James M. Owendoff,

Deputy Assistant Secretary for Environmental Restoration.

[FR Doc. 96–27801 Filed 10–29–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Arms Control and Nonproliferation

Draft Nonproliferation and Arms Control Assessment of Weapons—Usable Fissile Material Storage and Plutonium Disposition Alternatives

AGENCY: Department of Energy.

ACTION: Correction.

SUMMARY: In notice document 61 FR 51092 published in the issue of Monday, September 30, 1996, the following correction is made.

The public meeting schedule for the Rocky Flats Environmental Technology Site scheduled for November 4 has been changed to November 8: Rocky Flats Environmental Technology Site, Ramada Limited, 110 W. 104th Avenue, Mount Evans Room, Northglenn, CO 80234; 1:00 pm–4:00 pm 5:00 pm–8:30 pm

Dated: October 24, 1996.

Michael V. McClary,

Acting Director Office of Arms Control and Nonproliferation.

[FR Doc. 96–27800 Filed 10–29–96; 8:45 am]

BILLING CODE 6450–01–P

Bonneville Power Administration

Methow Valley Irrigation District Fisheries Enhancement Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's proposal to jointly fund, along with the Washington State Department of Ecology, a plan to replace Methow Valley Irrigation District's current canal system with a pressurized pipe system fed by groundwater wells, to improve instream flows of the Methow and Twisp Rivers for fish habitat. This project would be in the floodplain and wetlands located in the Methow River Valley of Okanogan County, between the towns of Twisp and Carlton, Washington. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATES: Comments are due to the address below no later than November 14, 1996.

ADDRESSES: Submit comments to the Public Involvement and Information Manager, Bonneville Power Administration—CKP, P.O. Box 12999, Portland, Oregon 97212. Internet address: comment@bpa.gov.

FOR FURTHER INFORMATION CONTACT: Lauri Croff - ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–5138, fax number 503–230–5699.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on October 17, 1996.

Thomas C. McKinney,

NEPA Compliance Officer.

[FR Doc. 96–27799 Filed 10–29–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. RP95–408–000 and RP95–408–001]

Columbia Gas Transmission Corporation; Notice of Informal Settlement Conference

October 24, 1996.

Take notice that an informal settlement conference in this proceeding will be convened on Friday, November 1, 1996, at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Thomas J. Burgess at 208–2058 or David R. Cain at 208–0917.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27824 Filed 10–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–762–001]

Williams Natural Gas Company; Notice of Amendment to a Request Under Blanket Authorization

October 24, 1996.

Take notice that on October 9, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an amendment to its prior notice request filed September 4, 1996, in Docket No. CP96–762–000 pursuant to Sections 157.205, 157.212(a), and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for authorization to replace and relocate the Missouri Public Service (MPS) Sedalia town border setting, under WNG's blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to reclaim the Sedalia double run, 10-inch orifice meter setting and appurtenant facilities located in Section 34, Township 46 North, Range 22 West, Pettis County, Missouri, and to install a new triple 6-inch run orifice meter setting and appurtenant facilities at the site of WNG's mainline gate in Section 35, Township 46 North, Range 23 West, Pettis County, Missouri. WNG originally stated that the $175,886 estimated cost to replace the Sedalia town border setting would be fully reimbursed by MPS. WNG now states that the statement that the project will be fully reimbursed by MPS was made in error and the project will, in fact, be only partially reimbursed by MPS.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27825 Filed 10–29–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181028; FRL 5570–8]

Carboxin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Environmental Protection Agency, Department of Pesticide Regulation (hereafter referred to as the ''Applicant'') to use the pesticide Pro-Gro (an unregistered end-use product containing 30 percent carboxin, 50 percent thiram and 20 percent inert ingredients) to treat onion seed to control onion smut. Thiram is registered on onions, with an existing tolerance of 0.5 ppm for dry bulb onions. The specific exemption request addresses residues of carboxin resulting from the application of the end-use product. An emergency exemption for this use has been requested for the previous 3 years, and a complete application for registration of this use and a tolerance petition has not been submitted to the Agency. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before November 14, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181028,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181028]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921

Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8337; e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of carboxin on onion seed to control onion smut. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The loss of Arasan 50 Red, the fungicide historically used to control onion smut, has resulted in an urgent, non-routine situation for growers in northern onion growing states. Onion smut, caused by the fungus *Urocystis magica*, is a serious and widespread disease of seedling onions in northern onion producing states. In the past, onion smut was controlled with thiram 50 percent wettable powder (Arasan 50 Red) seed treatments. However, the DuPont Comany ceased manufacture of this product in 1985, and growers have since exhausted existing stocks of Arasan 50 Red. According to the Applicant, there are no other registered pesticides or alternative practices available that will control this disease. There are other thiram products registered for use as onion seed treatments, but the maximum label rates are too low to control onion smut.

Under the proposed exemption, a maximum of 2.5 lbs. of product (0.75 lbs. of carboxin) per 100 lbs. of onion seed (2 oz. product/5 lbs. seed) will be applied to seed before packaging or as part of the pellet program. A maximum of one application will be applied directly to seed. A maximum of 52,300 lbs. of onion seed may be treated under this exemption.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of an emergency exemption which has been requested in any 3 previous years, and a complete application for registration of the use and/or a tolerance petition has not been submitted to the Agency. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181028] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Environmental Protection Agency, Department of Pesticide Regulation.

List of Subjects

Environmental protection, pesticides and pests, emergency exemptions.

Dated: October 15, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–27587 Filed 10–29–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181027; FRL 5570–4]

Chlorfenapyr; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Arizona Department of Agriculture (hereafter referred to as the ''Applicant'') to use the pesticide chlorfenapyr to treat up to 65,000 acres of lettuce to control beet armyworm (BAW). The Applicant proposes the use of a new (unregistered) chemical. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before November 14, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181027,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181027]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of chlorfenapyr on lettuce to control BAW. Information in accordance with 40 CFR part 166 was submitted as part of this request. According to the Applicant, the BAW is a key pest in lettuce and has been most prevalent August through December. However, in recent years BAW has been causing crop damage due to infestations all season long. The BAW attacks leafy crops at emergence often causing severe crop loss. Infestations in the crop cycle will stunt growth, damage and contaminate the harvestible portion of the crop.

There are currently nine registered active ingredients for use in lettuce and for control of BAW. However all of these products have questionable efficacy or labeled restrictions that prohibits their use at critical periods. Furthermore, almost all insecticide applications targeting BAW in lettuce now include Lannate *methonmyl* or Larvin *thiodicarb*. Lannate and Larvin are similar chemicals and the probability of resistance development given the pest and the products is very high. In 1995 growers reported failures with all product combinations. The failures resulted in significant crop lossess in Arizona due to stand reductions, slowed growth and unharvestible crop.

Under the proposed exemption, a maximum of 3 consecutive application at a rate of 0.15 lb active ingredient [(a.i.,)] (9.5 fl oz.) per acre, not to apply more than 1.0 lb a.i. (64.0 fl oz) per acre per crop, would be applied. Do not apply the product within 3 days of harvest. Do allow at least 7 days between each application. Do not apply by ground within 25 feet or air within 75 feet of lakes, rivers, reservoirs, permanent streams, marshes or natural ponds, estuaries of fish farms.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide), [etc., see 40 CFR 166.24]. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181027] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arizona Department of Agriculture.

List of Subjects

Environmental protection, pesticides and pests, emergency exemptions.

Dated: October 10, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–27586 Filed 10–29–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181023; FRL–5391–7]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to 23 States listed below. Six crisis exemptions were initiated by various States and one by the U.S. Department of Agriculture, and the U.S. Department of Agriculture, Animal and Plant Health Inspector Service. EPA also granted a quarantine exemption to the U.S. Department of Agriculture and the U.S. Department of Defense. These exemptions, issued during the months of May and June 1996, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS 1B1, 2800 Jefferson Davis Highway, Arlington, VA (703–308–8417); e-mail: group.ermus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture for the use of tebufenozide on cotton to control beet armyworms; June 1, 1996, to September 30, 1996. (Margarita Collantes)

2. Alabama Department of Agriculture and Industries for the use of Pirate on cotton to control beet armyworms and tobacco budworms; June 1, 1996, to September 30, 1996. (Margarita Collantes)

3. Arizona Department of Agriculture for the use of buprofezin on cotton to control whiteflies; June 1, 1996, to September 1, 1996. (Andrea Beard)

4. Arizona Department of Agriculture for the use of pyrifoxyfen on cotton to control whiteflies; June 1, 1996, to September 1, 1996. (Andrea Beard)

5. Arkansas State Plant Board for the use of tebufenozide on cotton to control beet armyworms; June 15, 1996, to September 30, 1996. (Margarita Collantes)

6. Arkansas State Plant Board for the use of Pirate on cotton to control beet armyworms and tobacco budworms; June 15, 1996, to September 30, 1996. (Margarita Collantes)

7. Arkansas State Plant Board for the use of carbofuran on cotton to control cotton aphids; June 7, 1996, to September 30, 1996. (Dave Deegan)

8. California Department of Pesticide Regulation for the use of avermectin on spinach to control leafminers; June 20, 1996, to June 29, 1996. (Libby Pemberton)

9. California Department of Pesticide Regulation for the use of triadimefon on peppers to control powdery mildew; June 18, 1996, to November 1, 1996. California had initiated a crisis exemption for this use. (Steve Jarboe)

10. California Department of Pesticide Regulation for the use of avermectin on grapes to control spider mites; June 10, 1996, to September 1, 1996. (Meredith Johnson)

11. California Department of Pesticide Regulation for the use of triadimefon on artichokes to control powdery mildew; June 11, 1996, to December 31, 1996. (Dave Deegan)

12. California Department of Pesticide Regulation for the use of iprodione on pistachios to control alternaria blight and bostryosphaeria pahicle/shoot blight; June 13, 1996, to September 30, 1996. (Andrea Beard)

13. California Department of Pesticide Regulation for the use of cypermethrin on green onions to control thrips; June 10, 1996, to June 9, 1996. (Andrea Beard)

14. Idaho Department of Agriculture for the use of tebuconazole on barley to control barley stripe rust; June 18, 1996, to July 31, 1996. (Dave Deegan)

15. Indiana Office of Indiana State Chemist for the use of propamocarb hydrochloride and cymoxanil on potatoes to control late blight; June 13, 1996, to June 13, 1997. (Libby Pemberton)

16. Indiana Office of Indiana State Chemist for the use of dimethomorph on potatoes to control late blight; June 13, 1996, to June 13, 1997. (Andrea Beard)

17. Kansas Department of Agriculture for the use of propamocarb hydrochloride, cymoxanil, and dimethomorph on potatoes to control late blight; June 13, 1996, to June 13, 1997. (Libby Pemberton)

18. Louisiana Department of Agriculture and Forestry for the use of carbofuran on cotton to control cotton aphids; June 7, 1996, to September 30, 1996. (Dave Deegan)

19. Maryland Department of Agriculture for the use of metolachlor on spinach to control weeds; June 7, 1996, to April 31, 1997. (Margarita Collantes)

20. Michigan Department of Agriculture for the use of tebufenozide on apples to control the obliquebanded leafroller; June 13, 1996, to September 30, 1996. (Pat Cimino)

21. Michigan Department of Agriculture for the use of triadimefon on asparagus to control asparagus rust; May 14, 1996, to November 1, 1996. (Dave Deegan)

22. Minnesota Department of Agriculture for the use of propiconazole on dry beans to control rust; June 20, 1996, to August 31, 1996. (Pat Cimino)

23. Minnesota Department of Agriculture for the use of fenoxaprop-ethyl + an uncleared safener on durum and spring wheat to control annual grasses; June 28, 1996, to August 1, 1996. (Pat Cimino)

24. Minnesota Department of Agriculture for the use of endothall on canola to control smartweeds; June 14, 1996, to July 31, 1996. (Dave Deegan)

25. Mississippi Department of Agriculture and Commerce for the use of norflurazon on Bermudagrass to control weeds; June 12, 1996, to September 15, 1996. (Dave Deegan)

26. Mississippi Department of Agriculture and Commerce for the use of carbofuran on cotton to control cotton aphids; June 7, 1996, to September 15, 1996. (Dave Deegan)

27. Nebraska Department of Agriculture for the use of propamocarb hydrochloride, cymoxanil, and dimethomorph on potatoes to control late blight; June 13, 1996, to June 13, 1997. (Libby Pemberton)

28. Nevada Division of Agriculture for the use of propamocarb hydrochloride, cymoxanil, and dimethomorph on potatoes to control late blight; June 13, 1996, to June 13, 1997. (Libby Pemberton)

29. New Jersey Department of Environmental Protection for the use of propamocarb hydrochloride, cymoxanil, and dimethomorph on potatoes to control late blight; June 7, 1996, to June 6, 1997. (Libby Pemberton)

30. New Jersey Department of Environmental Protection for the use of propamocarb hydrochloride, cymoxanil, and dimethomorph on tomatoes to control late blight; June 7, 1996, to June 6, 1997. (Libby Pemberton)

31. New York Department of Environmental Conservation for the use of tebufenozide on apples to control the obliquebanded leafroller; June 13, 1996, to September 30, 1996. (Pat Cimino)

32. North Dakota Department of Agriculture for the use of fenoxaprop-ethyl + an uncleared safener on durum wheat to control foxtails and wild oats; June 6, 1996, to July 15, 1996. (Pat Cimino)

33. North Dakota Department of Agriculture for the use of tralkoxydim on wheat to control foxtails and wild oats; June 12, 1996, to August 1, 1996. (Pat Cimino)

34. North Dakota Department of Agriculture for the use of propiconazole on dry beans to control rust; June 20, 1996, to August 31, 1996. (Pat Cimino)

35. Oregon Department of Agriculture for the use of tebuconazole on barley to control barley stripe rust; June 18, 1996, to July 31, 1996. (Dave Deegan)

36. Pennsylvania Department of Agriculture for the use of tebufenozide on apples to control the tufted apple budmoth; June 7, 1996, to September 30, 1996. (Pat Cimino)

37. Virginia Department of Agriculture and Consumer Services for the use of propamocarb hydrochloride, cymoxanil, and dimethomorph on potatoes to control late blight; June 13, 1996, to June 13, 1997. (Libby Pemberton)

38. Virginia Department of Agriculture and Consumer Services for the use of clomazone on watermelons to control broadleaf weeds; May 14, 1996, to June 30, 1996. (Dave Deegan)

39. Virginia Department of Agriculture for the use of tebufenozide on apples to control the tufted apple budmoth; June 13, 1996, to September 30, 1996. (Pat Cimino)

40. Washington Department of Agriculture for the use of tebuconazole on barley to control barley stripe rust; June 18, 1996, to July 31, 1996. (Dave Deegan)

41. Washington Department of Agriculture for the use of chlorpyrifos on currants to control the currant borer; June 3, 1996, to August 1, 1996. Washington had initiated a crisis exemption for this use. (Andrea Beard)

42. West Virginia Department of Agriculture for the use of tebufenozide on apples to control the tufted apple budmoth; June 7, 1996, to September 30, 1996. (Pat Cimino)

Crisis exemptions were initiated by the:

1. Arizona Department of Agriculture on May 24, 1996, for the use of myclobutanil on watermelons to control

powdery mildew. This program has ended. (Dave Deegan)

2. Arkansas State Plant Board on May 7, 1996, for the use of cyhalothrin on rice to control greenbug and oakcherry aphids. This program has ended. (Dave Deegan)

3. Louisiana Department of Agriculture and Forestry on June 8, 1996, for the use of cyhalothrin on rice to control armyworms. This program has ended. (Dave Deegan)

4. Montana Department of Agriculture on June 8, 1996, for the use of bifenthrin on canola to control the orucifer flea beetle. (Andrea Beard)

5. Texas Department of Agriculture on May 29, 1996, for the use of cyhalothrin on rice to control fall armyworms. This program is expected to last until September 1, 1996. (Dave Deegan)

6. Washington Department of Agriculture on June 14, 1996, for the use of tebuconazole on wheat to control stripe rust. This program has ended. (Dave Deegan)

7. U.S. Department of Agriculture, Animal and Plant Health Inspector Service on June 11, 1996, for the use of sodium hypochlorite as a seed disinfectant for karnal bunt eradication. This program is expected to last until April 15, 1999. (Dave Deegan)

8. U.S. Department of Agriculture on June 20, 1996, for the use of d-phenothrin on aircraft and other transportation vehicles to control Fruit flies, Japanese beetles and other insects. This program is expected to last until June 27, 1999. (Libby Pemberton)

EPA has granted quarantine exemptions to the:

1. U.S. Department of Agriculture for the use of d-phenothrin on aircraft and cargo containers to control Fruit flies, Japanese beetles and other insects throughout the United States; June 28, 1996, to June 27, 1999. (Libby Pemberton)

2. U.S. Department of Defense for the use of paraformaldehyde on biological containment areas to control various disease causing organisms (ebola, anthrax, plague, etc.); June 28, 1996, to June 28, 1999. (Steve Jarboe)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: October 18, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–27828 Filed 10–29–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5643–6]

Taylor Road Landfill Superfund Site; Notice of Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement.

SUMMARY: Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) proposes to enter into an Administrative Order on Consent (AOC) with 32 *de minimis* parties at the Taylor Road Landfill Superfund Site (Site), located in Hillsborough County, Florida, to settle claims for past and future response costs at the Site. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement and a list of proposed settling *de minimis* parties are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency—Region 4, Program Services Branch, Waste Management Division, 100 Alabama Street, S.W., Atlanta, Georgia 30303, (404) 562–8887. Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: October 17, 1996.

Jewell Harper,

Acting Director, Waste Management Division.

[FR Doc. 96–27833 Filed 10–29–96; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 14, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Kenneth Whitmore and James Whitmore, both of Clarinda, Iowa; to acquire an additional 50.54 percent, for a total of 92.56 percent, of the voting shares of Whitmore Company, Inc., Corning, Iowa, and thereby indirectly acquire Okey-Vernon First National Bank, Corning, Iowa, Page County State Bank, Clarinda, Iowa, and First Federal Savings Bank of Creston, Creston, Iowa.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Freda Evans and Tom Evans, both of Stanford, Montana; to retain 50.4 percent of the shares of Big Sky Holding Company, Stanford, Montana, and thereby indirectly acquire Basin State Bank, Stanford, Montana.

Board of Governors of the Federal Reserve System, October 24, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–27753 Filed 10-28-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 25, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Forrest City Financial Corporation, Forrest City, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Forrest City Bank, N.A., Forrest City, Arkansas. Forest City Bank currently operates as Forrest City Bank, FSB, and will convert to a national bank.

Board of Governors of the Federal Reserve System, October 24, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–27754 Filed 10–29–96; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 22]

Federal Travel Regulation; Texas State Court Decision Overturning Texas House Bill 2129 That Imposed a Hotel Occupancy Tax on the Federal Government and Federal Employees For Official Travel Performed in the State of Texas

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin informs agencies of the recent Texas State court decision which overturned a recently enacted Texas State hotel occupancy tax. The Texas State legislature enacted Texas House Bill 2129, effective September 1, 1995, which imposed a 6 percent hotel occupancy tax on the use or possession of a hotel room in the State of Texas on the Federal Government and on Federal employees lodging in the state while performing official government travel. On April 30, 1996, a Texas State court ruled that Texas House Bill 2129 was unconstitutional on the basis that the provisions taxing the Federal Government and Federal employees performing official travel violated Article VI, clause 2, of the U.S. Constitution (the Supremacy Clause), as well as Article VIII, section 1 and Article I, section 3 of the Texas State Constitution (the Equal Protection Clause). Agencies and their employees must no longer be assessed this tax while lodging in Texas on official government business.

SUPPLEMENTARY INFORMATION: Agencies may wish to issue internal guidance informing their employees who perform official travel in the State of Texas that the 6 percent Texas State hotel occupancy tax must not be paid. The General Services Administration is attempting to coordinate a refund of improperly collected taxes and will issue further guidance on this subject.

FOR FURTHER INFORMATION CONTACT: Calvin L. Pittman, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

Dated: October 17, 1996.

Becky Rhodes,

Deputy Associate Administrator, Office of Transportation and Personal Property.

Attachment

Attachment

October 17, 1996.

TO: Heads of Federal agencies.

SUBJECT: Texas State court decision overturning Texas House Bill 2129 that imposed a hotel occupancy tax on the Federal Government and Federal employees for official travel performed in the State of Texas.

1. *Purpose.* This bulletin informs agencies of a recent Texas State court decision which overturned the Texas State hotel occupancy tax imposed on September 1, 1995.

2. *Background.* The Texas State legislature enacted House bill 2129 which imposed a 6 percent hotel occupancy tax on the use or possession of a hotel room in the State of Texas on the Federal Government and on Federal employees lodging in the state while performing official government travel. Texas House Bill 2129 became effective on September 1, 1995. However, on April 30, 1996, a Texas State court ruled that Texas House Bill 2129 was unconstitutional on the basis that the provisions taxing the Federal Government and Federal employees performing official travel violated Article VI, clause 2, of the U.S. Constitution (the Supremacy Clause), as well as Article VIII, section 1 and Article I, section 3 of the Texas State Constitution (the Equal Protection Clause). See *La Quinta Inns, Inc.* v. *John Sharp,* No. 95–15739 (Dist. Ct. Tex., Apr. 30, 1996). Agencies may wish to issue internal guidance to inform their employees performing official travel in the State of Texas that the 6 percent Texas State hotel occupancy tax must not be paid.

3. *Expiration date.* This bulletin expires for administrative tracking purposes on April 30, 1997.

4. *For further information contact.* Calvin L. Pittman, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

[FR Doc. 96–27397 Filed 10–29–96; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

HHS Management and Budget Office; Office of Facilities Services; Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services is being amended at Chapter AM, HHS Management and Budget Office, Chapter AMQ, Administrative Services Center, as last amended at 57 FR 37823–24, 8/20/92. The change is to delete Chapter AMQ and replace with a new Chapter AMR, retitle the Administrative Services Center as the Office of Facilities Services and realign its functions. The changes are as follows:

Delete Chapter AMQ, ''Administrative Services Center,'' in its entirety and replace with the following:

A. AMR.00 Mission. The Office of Facilities Services (OFS) provides leadership and direction for real property management operations and provides Department-wide policy support for real property, space management, occupational safety and health, environmental and historic preservation responsibilities. Provides facilities management services to all HHS components in the Southwest Washington, D.C. complex. Advises senior Departmental officials on management issues related to the effective and efficient operations of the applicable programs and components. Acts as the Department's focal point with other Federal agencies and HHS Operating Divisions (OPDIVs) on policy and regulatory issues involving real property, space management, occupational safety and health, environmental and historic preservation activities for the Office of the Secretary (OS). Directs, plans, obtains, and coordinates building management, space management and design, systems furniture procurement and installation, safety and health and support services in the Southwest Washington, D.C. complex.

B. AMR.10 Organization. The Office of Facilities Services is headed by a Director who reports to the Assistant Secretary for Management and Budget. The Office consists of the following entities:

Immediate Office (AMR)
Division of Policy Coordination (AMR1)
Division of Resources Management (AMR2)
Division of Buildings Management (AMR3)
Division of Security and Special Services (AMR4)

C. AMR.20 Functions. The Office of Facilities Services is responsible for the following functions:

1. The Office of the Director provides leadership, policy guidance and supervision as well as coordinating long and short range planning to constituent organizations.

2. Division of Policy Coordination (AMR1)

a. Establishes, maintains and promulgates HHS and OS policy for the HHS real property program. Establishes guidelines and procedures to monitor effectively the real property owned or leased by HHS.

b. Establishes guidelines to monitor the utilization of all space assigned to the Department by GSA.

c. Develops guidance to the OPDIVs on technical and facilities aspects of the HHS annual RENT budget. Provides oversight of OPDIV performance for this function and provides technical assistance on a Department-wide basis as required. Coordinates preparation among OPDIVs on facilities and space aspects, and collaborates with the Office of Budget on final Department-wide RENT budgets, consistent with OMB and GSA guidance.

d. Establishes, maintains and promulgates HHS and OS policy for the occupational safety and health, and environmental programs. Provides oversight of OPDIV performance of these functions and provides technical assistance on a Department-wide basis as required.

e. Establishes, maintains, and promulgates HHS and OS policy for the physical security program and provides technical assistance on a Department-wide basis as required.

f. Establishes, maintains, and promulgates HHS and OS policy for the historic preservation program. Provides oversight or OPDIV performance for this function and provides technical assistance on a Department-wide basis as required.

g. Establishes, maintains, and promulgates HHS and OS policy for the Health and Wellness, and Day Care Centers. Provides technical assistance on a Department-wide basis as required. Provides oversight of the HHS Health and Wellness Center at Headquarters.

h. Interprets Department of Energy policy on energy management issues and oversees implementation of energy related legislation within HHS.

i. Establishes information and reporting standards for all above listed programs. Collects, assembles, and analyzes required information for mandated reports to Congress, OMB, GSA and other Federal agencies.

3. Division of Resources Management (AMR2).

a. Provides guidance and direction in formulating and overseeing the execution of OFS's budget and use of its personnel resources, conferring with other organizations within OS as required.

b. Plans, directs, and coordinates financial and budgetary programs for GDM, RENT, Delegated Authority and TAP accounts. Maintains commitment records against allowances, and certifies funds availability for these funding activities.

c. Consolidates and presents budget estimates and forecasts of OFS's resources. Develops and maintains an overall system of budgetary controls to ensure observance of established ceilings on both funds and personnel.

d. Develops and executes the Headquarters OS RENT budget including preparation of the GSA 3530's. Reconciles and processes centralized RENT billings for OS and OPDIV space in the Southwest Washington, D.C. complex. Distributes charges to responsible Offices.

e. Clears, funds and tracks all OFS Reimbursable Work Authorizations (RWAs).

f. Identifies/develops the creative application of automated systems in OFS to enhance service delivery.

g. Provides comprehensive PC hardware and software maintenance and support for OFS.

h. Coordinates/develops in-house applications training seminars.

i. Coordinates development of the IRM financial and strategic plans.

4. Division of Buildings Management (AMR3).

a. Under delegation from GSA, is responsible for the physical plan operations and maintenance of the Hubert H. Humphrey Building including procurement and administration of related contracts.

b. Coordinates with GSA on building operation and maintenance matters for HHS-occupied space in GSA controlled facilities in the Southwest Washington, D.C. complex.

c. Is responsible for the acquisition, disposition, allocation and monitoring of space for the OS in Washington, D.C. and for the OPDIVs in the Southwest Washington, D.C. complex.

d. Enforces compliance with Federal space utilization principles in the Southwest Washington, D.C. complex by the preparation of high quality space management plans and drawings, and the arrangement of quality and timely renovation work. Provides engineering and architectural services as well as oversight in support of Southwest Washington, D.C. complex facilities both through in-house staff and contractors.

e. Manages major renovation and system furniture installation projects, moves and space consolidations. Oversees the restoration and renovation of joint use areas in the HHH Building. Procures systems furniture including related design, installation and maintenance services for the Southwest Washington, D.C. complex.

5. Division of Security and Special Services (AMR4)

a. Oversees the OS and Southwest complex occupational safety and health programs, including procurement and administration of related contracts.

b. Provides physical security for employees and facility protection in the HHH Building through the procurement and administration of guard services and equipment. Serves as liaison with GSA for physical security issues affecting HHS employees in GSA controlled space in the Southwest Washington, D.C. complex.

c. Provides a variety of facility support services to the OS and OPDIVs in the Southwest Washington, D.C. complex, including the management of conference and parking facilities, the issuance and control of employee identification badges, and special events support.

d. Serves as the focal point within OFS for the receipt and referral of customer requests for services and complaints related to building operations and facilities management matters and is responsible for monitoring the timely and efficient corrective action.

Dated: October 9, 1996.

Approved By:

John J. Callahan,

Assistant Secretary for Management and Budget.

[FR Doc. 96–27752 Filed 10–29–96; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Joint Meeting of the Nonprescription Drugs Advisory Committee, the Advisory Committee for Reproductive Health Drugs, the Anti-Infective Drugs Advisory Committee, and the Antiviral Drugs Advisory Committee

Date, time, and place. November 20, 1996, 1 p.m., and November 21 and 22, 1996, 8:30 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, November 20, 1996, 1 p.m. to 3 p.m.; open public hearing, 3 p.m. to 4 p.m., unless public participation does not last that long; open committee discussion, 4 p.m. to 5:30 p.m.; open committee discussion, November 21, 1996, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; open public hearing, November 22, 1996, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Kennerly K. Chapman, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or e-mail chapmank@cder.fda.gov, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Nonprescription Drugs Advisory Committee, code 12541. Please call the hotline for information concerning any possible changes.

General function of the committees. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (OTC) (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Advisory Committee for Reproductive Health Drugs reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics, gynecology, and related specialties. The Anti-Infective Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders. The Antiviral Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 6, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committees discussion. On November 20, 1996, the committees will jointly discuss issues relevant to the use of microbicidal topical vaginal agents against infection with sexually transmitted *Chlamydia trachomatis* (CT) and *Neisseria gonorrhoeae* (GC). In light of the significant public health impact of these sexually transmitted diseases, and the difficulties related to the evaluation and promotion of topical vaginal agents as prophylaxis against CT and GC, FDA is soliciting opinions and advice from the advisory committees regarding the development of policy for topical vaginal bacteriocidal agents. Issues for discussion include: (1) The quality and type of data that are available to support the use of such agents as prophylaxis against CT and GC, (2) what additional data would be required by the agency to create a label for such agents, and (3) whom would the appropriate target audience be for such agents. The agency encourages investigators, academicians, and members of the pharmaceutical industry with information about the use of such agents as prophylaxis against infection with CT and GC to respond to this notice. On November 21, 1996, the committees will discuss guidelines for the development of vaginal products for preventing the transmission of the human immunodeficiency virus (HIV). On November 22, 1996, the committees will discuss proposals and guidances for clinical efficacy studies on marketed OTC vaginal spermicides. Issues for discussion will include the type of data and quality of both in vitro and in vivo data needed to support and ensure spermicidal efficacy in final formulation.

Antiviral Drugs Advisory Committee

Date, time, and place. November 22, 1996, 8:30 a.m., Gaithersburg Hilton, Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 4:30 p.m.; Rhonda W. Stover, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Antiviral Drugs Advisory Committee, code 12531. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 15, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss data relevant to new drug application (NDA) 20–705, Rescriptor®, (delavirdine, Pharmacia and Upjohn Co.) for use in the treatment of HIV infection.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 22, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–27854 Filed 10–29–96; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Substance Abuse and Mental Health Services Administration; Notice of Listing of Members of the Substance Abuse and Mental Health Services Administration's Senior Executive Service Performance Review Board (PRB)

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces the persons who will serve on the Substance Abuse and Mental Health Services Administration's Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the Federal Register.

The following persons will serve on the SAMHSA Performance Review Board, which oversees the evaluation of performance appraisals of SAMHSA's Senior Executive Service (SES) members:

Frank J. Sullivan, Ph.D., Chairperson

Bernard S. Arons, M.D.

William A. Robinson, M.D.

Ruth D. Sanchez-Way, Ph.D.

For further information about the SAMHSA Performance Review Board, contact the Division of Human Resources Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 14 C–24, Rockville, Maryland 20857, telephone (301) 443–5030 (not a toll-free number).

Nelba Chavez,

Administrator, SAMHSA.

[FR Doc. 96–27711 Filed 10–29–96; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Kalispel Tribe in Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: The Assistant Secretary, Indian Affairs proclaimed approximately 40.06 acres, more or less, as an addition to the reservation of the Kalispel Tribe on October 19, 1996. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Chief, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: A proclamation was issued on October 19, 1996, according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the tract of land described below. The land was proclaimed to be an addition to and part of the reservation of the Kalispel Tribe for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Kalispel Indian Reservation

Spokane County, Washington

Southeast quarter of Section 13, Township 25 North, Range 41 East, Willamette Meridian, Spokane County, Washington.

Parcel ''A–1'', being a portion of Parcel ''A'', Record of Survey Book 42, Page 12, records of Spokane County described as follows: Beginning at a point which is situated S 89°10′45″ W. 95.00 feet from the Easterly line of said SE¼ and N 0°49′15″ W. 105.00 feet from the Southerly line of said SE¼; thence from said point of beginning N 0°49′15″ W. 548.00 feet; thence S 89°10′45″ W. 1604.11 feet to a point on the Westerly line of said Parcel ''A''; thence S 22°51′20″ W. along said Westerly line, 551.74 feet to the Southwesterly corner thereof; thence N 85°29′41″ E. 122.42 feet; thence along a tangent curve to the right having a radius of 3716.88 feet, through a central angle of 2°57′22″ and an arc distance of 191.77 feet; thence tangent to the preceding curve N 88°27′03″ E. 226.04 feet; thence along a tangent curve to the right, having a radius of 4064.30 feet, through a central angle of 4°13′28″ and an arc distance of 299.66 feet; thence tangent to the preceding curve S 87°19′29″ E. 947.13 feet to a point situated on the Northerly line of that certain ''Roadway Easement'' granted to State of Washington, dated March 24, 1992; thence N 83°22′42″ E., along said Northerly line, 41.21 feet, more or less to the point of beginning; EXCEPT that portion, if any, conveyed to Spokane County by instrument recorded October 28, 1975 under Auditor's File No. 7510280362; Situated in the County of Spokane, State of Washington, containing 20.06 acres, more or less.

Parcel ''A–2'' being a portion of Parcel ''A'' Record of Survey, Book 42, Page 12, records of Spokane County, described as follows: Commencing at a point which is situated S 89°10′45″ W. 95.00 feet from the Easterly line of said SE¼ and N 0°49′15″ W. 105.00 feet from the Southerly line of said SE¼; thence from said point of commencement N 0°49′15″ W. 548.00 feet to the point of beginning; thence, continuing N 0°49′15″ W. 590.87 feet; thence leaving said right-of-way line S 89°10′45″ W. 1345.02 feet to a point on the Westerly line of said parcel ''A''; thence S 22°51′20″ W., along said Westerly line, 645.18 feet; thence, leaving said Westerly line, N 89°10′45″ E. 1604.11 feet to the point of beginning; EXCEPT that portion, if any, conveyed to Spokane County by instrument recorded October 28, 1975 under Auditor's File No. 7510280362; situated in the County of Spokane, State of Washington, containing 20.00 acres, more or less.

Title to the land described above is conveyed subject to any valid existing easements for public roads, highways, public utilities, pipelines, railroads, and any other rights-of-way on record.

Dated: October 19, 1996.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 96–27816 Filed 10–29–96; 8:45 am]

BILLING CODE 4310–W7–P

Bureau of Land Management

[UT–940–06–5700–00; UTU–173829, UTU–74046]

Environmental Assessment and Proposed Plan Amendment to Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and notice of realty action.

SUMMARY: Notice is hereby given that an environmental assessment (EA) and proposed plan amendment to the Pinyon Management Framework Plan (MFP) for land tenure adjustments have been completed. Pursuant to this environmental assessment and proposed plan amendment, 2,482.82 acres of public lands have been found suitable for disposal through exchange pursuant to section 206, Title II of the Federal Land Policy and Management Act of 1976. Public land proposed for exchange is located at Salt Lake Meridian, T. 35 S., R. 17 W., Sec. 18, lots 1 to 4 inclusive; E½SW¼., E½NW¼. T. 35 S., R. 18 W., Sec. 13; Sec. 14, E½; Sec. 24, NW¼. T. 34 S., R. 17 W., Sec. 19, lots 3 and 4. T. 33 S., R. 17 W., Sec. 23, W½; Sec. 34, W½; Sec. 35, W½, Iron County, Utah. The United States would acquire the following described 2,080.00 acres of private land from the Escalante Farms Co. and Janice L. Woods Trust: Salt Lake Meridian, T. 35 S., R. 18 W., Sec. 23, NW¼; Sec. 25, W½; Sec. 27, N½; Sec. 29, N½; Sec. 33, S½; Sec. 34, N½; Sec. 35, W½. The land tenure adjustment will not occur until at least 60 days after the date of this notice and is contingent upon the signing of a decision record approving the proposed amendment.

DATES: The proposed plan amendment may be protested. The protest period will commence with the date of publication of this notice. Protests must be submitted on or before November 29, 1996.

ADDRESSES: Protests to the proposed plan amendment should be addressed to the Director, Bureau of Land Management (480), Resource Planning Team, 1849 C Street, NW, Washington, DC 20240, within 30 days after the date of publication of this notice for the proposed planning amendment.

FOR FURTHER INFORMATION CONTACT: Craig Egerton, Acting Beaver River Resource Area Manager, Bureau of Land Management, Cedar City District, 176 D.L. Sargent Drive, Cedar City, Utah 84720, telephone (801) 586–2401.

SUPPLEMENTARY INFORMATION: The lands described have been segregated from all forms of appropriation under the public land laws, including the mining laws, for a period of five (5) years or pending disposition, whichever occurs first. Only the surface estate will be disposed. The patents, when issued, will contain certain reservations to the United States and will be subject to existing rights-of-way. Detailed information concerning these reservations as well as specific conditions of the exchange are available for review at the Cedar City District Office at the address listed above. Any person who participated in the planning process and has an interest which is or may be adversely affected by these proposed amendments may protest to the Director of the Bureau of Land Management. The protest must be in writing and filed within 30 days of the date of publication of this Notice of Availability in the Federal Register. The protest shall contain the name, mailing address, telephone number and interest of the person filing the protest; a statement of the issue or issues being protested; a statement of the part of the amendment(s) being protested; a copy of all documents addressing the issue or issues that were submitted during the planning process and a concise statement explaining why the State Director's proposed decision is believed to be in error. In the absence of timely objections, these proposals shall become the final determination of the Department of the Interior.

David E. Little,

Acting State Director.

[FR Doc. 96–27786 Filed 10–29–96; 8:45 am]

BILLING CODE 4310–DQ–P

[MT–920–05–1310—P; NDM 74482]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NDM 74482, Slope County, North Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as contained in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: October 22, 1996.

Joan M. Seibert,

Acting Chief, Fluids Adjudication Section.

[FR Doc. 96–27829 Filed 10–29–96; 8:45 am]

BILLING CODE 4310–DN–P

[NV–013–1430–01; N–61244]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following land in Elko County, Nevada has been examined and identified as suitable for disposal by direct sale, including the mineral estate with no known value, under Section 203 and Section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719) at no less than fair market value:

Mount Diablo Meridian, Nevada

T. 34 N., R. 55 E.,

Sec. 8, E½NE¼SW¼, NE¼NW¼SE¼, S½NW¼NW¼SE¼, S½NW¼SE¼.

Comprising 55 acres, more or less.

The above described land is being offered as a direct sale to Elko General Hospital, a political subdivision of Elko County, Nevada. Final determination on disposal will be made after completion of an environmental analysis. Another Notice of Realty Action will be issued at that time.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Resource Area, 3900 E. Idaho Street, Elko, Nevada.

Upon publication of this Notice of Realty Action in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the Federal Register of a Notice of Termination of Segregation, or 270 days from date of this publication, which ever occurs first.

Interested parties may submit comments to the Elko District Office, Bureau of Land Management, 3900 E. Idaho Street, Elko, NV 89801. Comments shall be submitted by December 16, 1996.

Dated: October 18, 1996.

Helen Hankins,

District Manager.

[FR Doc. 96–27785 Filed 10–29–96; 8:45 am]

BILLING CODE 4310–HC–P

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico Oil and Gas Lease Sale 166

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the Proposed Notice of Sale.

Gulf of Mexico Outer Continental Shelf (OCS); Notice of Availability of the Proposed Notice of Sale for proposed Oil and Gas Lease Sale 166 in the Central Gulf of Mexico. This Notice of Availability is published pursuant to 30 CFR 256.29(c), as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for proposed Sale 166 may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or by telephone at (504) 736–2519.

Potential bidders are advised that the State of Alabama has requested that unleased blocks due south and within 15 miles of Baldwin County, Alabama, not be offered for leasing in this proposed sale. As of October 21, 1996, this involves six whole or partial blocks: Mobile Area Blocks 826, 829, 957, 958, and 1001, and Viosca Knoll Block 34. Potential bidders and other interested parties are invited to express their views on this matter in writing by December 1, 1996. Comments should be addressed to the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

The final Notice of Sale will be published in the Federal Register at least 30 days prior to the date of bid opening. Bid opening is scheduled for March 1997.

Dated: October 24, 1996.

Hugh Hilliard,

Acting Director, Minerals Management Service.

[FR Doc. 96–27841 Filed 10–29–96; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Capital Memorial Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Thursday, November 14, 1986, at 1 p.m., at the National Building Museum, Room 312, 5th and F Streets, NW.

The Commission was established by Public Law 99–652, the Commemorative Works Act, for the purpose of preparing and recommending to the Secretary of the Interior, Administrator, General Services Administration, and Members of Congress broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Area (as defined in the National Capital Planning Act of 1952, as amended), through the media of monuments, memorials and Statues. it is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary and Administrator, and to serve as information focal point for those persons seeking to erect memorials on Federal land in the National Capital Area.

The members of the Commission are as follows:

Director, National Park Service

Chairman, National Capital Planning Commission

The Architect of the Capitol

Chairman, American Battle Monuments Commission

Chairman, Commission of Fine Arts

Mayor of the District of Columbia

Administrator, General Services Administration

Secretary of Defense

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and environs.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact the Commission at 202–619–7097. Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Stewardship and Partnerships, National Capital System Support Office, 1100 Ohio Drive, SW., Room 220, Washington, D.C., 20242.

Dated: October 17, 1996.

Terry R. Carlston,

Acting Field Director, National Capital Area.

[FR Doc. 96–27751 Filed 10–29–96; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 19, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by November 14, 1996.

Carol D. Shull,

Keeper of the National Register.

COLORADO

Garfield County

Cardiff Coke Ovens, Co. Rt. 116, approximately 1.5 mi. S. of Glenwood, Glenwood Springs vicinity, 96001331

FLORIDA

Dade County

Fuchs Bakery (Homestead MPS), 102 S. Krome St., Homestead, 96001335

Lindeman—Johnson House (Homestead MPS), 906 N. Krome Ave., Homestead, 96001332

Leon County

Averitt—Winchester House, W side of FL 59, S of jct. with Moccasin Gap—Cromartie Rd., Miccosukee, 96001336

Orange County

Tilden, Luther F., House, 940 Tildenville School Rd., Winter Garden, 96001337

Palm Beach County

Pahokee High School, 360 Main St., Pahokee, 96001334

Volusia County

Cypress Street Elementary School (Daytona Beach MPS), 900 Cypress St., Daytona Beach, 96001333

GEORGIA

Bulloch County

Savannah Avenue Historic District, Along Savannah Ave. and E. Grady St. between S. Crescent Cir., Statesboro, 96001339

Fulton County

College Park Historic District, Roughly bounded by Vesta Ave., Yale Ave., Madison St., Harris St., and Washington Rd., College Park, 96001338

Jenkins County

Downtown Millen Historic District, Along Cotton Ave. roughly bounded by N. Hendrix St., E. Winthrope Ave., N. Masonic St., and the RR line, Millen, 96001340

ILLINOIS

Alexander County

McClure, Thomas J. and Caroline, House, Main St., .5 mi. E of IL 3, McClure, 96001341,

Lake County

Armour, Philip D., III, House, 900 Armour Dr., Lake Bluff, 96001342

KENTUCKY

Boone County

Crisler—Gulley Mill, Camp Ernst Ln., approximately .5 mi. NW of jct. with Camp Ernst Rd., Burlington vicinity, 96001347

Bourbon County

Sugar Grove, 573 Clay—Kiser Rd., Paris vicinity, 96001346

Woodlawn, Peacock Rd., approximately 2 mi. N of Paris, Paris vicinity, 96001345

Franklin County

Archeological Site 15 FR 368 (Boundary Increase), Address Restricted, Frankfort vicinity, 96001348

Hardin County

West Point Historic District (Hardin County MRA)

Roughly bounded by the Salt River, 2nd, South, 13th, Mulberry, and Elm Sts., West Point, 96001344

Warren County

Cave Spring Farm, Rocky Hill Rd., approximately .5 mi. NE of Smiths Grove, Smiths Grove vicinity, 96001343

MARYLAND

Carroll County

Lineboro Historic District, Main Street from Church to Mill Sts., Lineboro, 96001350

Baltimore Independent City

Cedar Grove, 301 Kendall Rd., Baltimore, 96001349

MINNESOTA

St. Louis County

Fujita, Jun, Cabin, Eastern tip of Wendt Island, approximately 30 mi. E of Ranier, Voyageurs National Park, Ranier vicinity, 96001351

MISSISSIPPI

Alcorn County

Corinth National Cemetery (Civil War Era National Cemeteries MPS), 1551 Horton St., Corinth, 96001352

NEBRASKA

Platte County

Columbus Commercial Historic District, Roughly bounded by 11th and 14th Sts. and 23rd and 28th Aves., Columbus, 96001353

NEW YORK

Kings County

Stuyvesant Heights Historic District (Boundary Increase), Roughly, Decatur St. from Tompkins to Lewis Aves., Brooklyn, 96001355

New York County

St. Michael's Church, 225 W. 99th St., New York, 96001354

TENNESSEE

Clay County

Free Hills Rosenwald School, Free Hills Rd., E of TN 52, Free Hill, 96001360

Haywood County

Woodlawn Baptist Church and Cemetery, Woodlawn Rd., E of TN 19, Nutbush vicinity, 96001358

Sumner County

Cairo Rosenwald School, Zieglers Fort Rd., approximately 2.5 mi. S of TN 25, Cairo, 96001359

White County

Sperry—Smith House, 121 Maple St., Sparta, 96001357

TEXAS

De Witt County

Municipal Power Plant, 810 Front St., Yoakum, 96001356

WISCONSIN

Grant County

Central House Hotel, 1005 Wisconsin Ave., Boscopel, 96001361

[FR Doc. 96–27750 Filed 10–29–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Antitrust Division

Public Comments and Plaintiff's Response; United States of America v. American Skiing Company and S–K–I Limited

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h), that Public Comments and Plaintiff's Response have been filed with the United States District Court for the District of Columbia in *United States* v. *American Skiing Company and S–K–I Limited,* Civ. Action No. 96–01308.

On June 11, 1996, the United States filed a Complaint seeking to enjoin a transaction in which American Skiing Company (''ASC'') agreed to acquire S–K–I Limited (''S–K–I''). ASC and S–K–I are the two largest owner/operators of ski resorts in New England, and this transaction would have combined eight of the largest ski resorts in this region. The Complaint alleged that the proposed acquisition would substantially lessen competition in providing skiing to eastern New England and Maine skiers in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

Public comment was invited within the statutory 60-day comment period. Such comments, and the responses thereto, are hereby published in the Federal Register and filed with the Court. Brochures, newspaper clippings and miscellaneous materials appended to the Public Comments have not been reprinted here, however they may be inspected with copies of the Complaint, Stipulation, proposed Final Judgment, Competitive Impact Statement, Public Comments and Plaintiff's Response in Room 3233 of the Antitrust Division, Department of Justice, Tenth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530 (telephone: 202–633–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, N.W., Washington, D.C. 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States of America, Plaintiff, v. American Skiing Company, and S–K–I Limited, Defendants.

[Civil Action No.: 96–01308–TPJ]

United States' Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h))(the ''Tunney Act''), the United States responds to the public comments received regarding the proposed Final Judgment in this case.

I. Background

The United States filed a civil antitrust Complaint on June 11, 1996, alleging that the proposed acquisition of the ski resorts of S–K–I Limited (''S–K–I'') by American Skiing Company (''ASC'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleged that ASC and S–K–I were the two largest owner/operators of ski resorts in New England, and that the proposed transaction would combine eight of the largest ski resorts in this region. In particular, the acquisition would substantially increase the concentration among ski resorts to which eastern New England residents (i.e., those in Maine, eastern Massachusetts and Connecticut, and Rhode Island) practicably can go for weekend ski trips, and among those to which Maine residents practicably can go for day ski trips. As a result, this acquisition threatened to raise the price of, or reduce discounts for, weekend and day skiing to consumers living in those areas in violation of Section 7 of the Clayton Act.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit ASC to complete its acquisition of S–K–I's ski resorts, but also require certain divestitures that would preserve competition for skiers in eastern New England and Maine. This settlement consists of a Stipulation and a proposed Final Judgment.

The proposed Final Judgment orders the parties to sell all of S–K–I's rights, titles, and interests in the Waterville Valley resort in Campton, New Hampshire, and all of ASC's rights, titles, and interests in the Mt. Cranmore resort in North Conway, New Hampshire, to one or more purchasers who have the capability to compete effectively in the provision of skiing for eastern New England and Maine skiers at Waterville Valley and Mt. Cranmore. The Stipulation and proposed Final Judgment also impose a hold separate agreement that requires defendants to ensure that, until the divestiture mandated by the proposed Final Judgment has been accomplished, S–K–I's Waterville Valley and ASC's Mt. Cranmore operations will be held separate and apart from, and operated independently of, defendants' other assets and businesses, and be preserved and maintained as saleable and economically viable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that defendants' other ski resorts.

A Competitive Impact Statement (''CIS''), explaining the basis for the complaint and proposed consent decree in settlement of the suit, was filed on June 18, 1996, and subsequently published for comment, along with the Stipulation and proposed Final Judgment, in the Federal Register on June 28, 1996 (61 FR 33765–33774), as required by the Tunney Act. The CIS explains in detail the provisions of the proposed Final Judgment, the nature and purpose of these proceedings, and the proposed acquisition alleged to be illegal.

The United States, ASC, and S–K–I stipulated that the proposed Final Judgment may be entered after compliance with the Tunney Act. The plaintiff and defendants have now, with the exception of publishing the comments and this response in the Federal Register, completed the procedures the Tunney Act requires before the proposed Final Judgment can be entered.[1] The sixty-day period for public comments expired on August 27, 1996. As of October 1, 1996, the United States had received 98 comments.

The comments, which are collected in the Appendix to this Response,[2] came from a variety of sources. The most comprehensive comment was submitted by the Mount Washington Valley Task Force, chaired by James B. Somerville,

[1] The United States plans to publish the comments and this response promptly in the Federal Register. It will provide the Court with a certificate of compliance with the requirements of the Tunney Act and file a motion for entry of final judgment once publication takes place.

[2] The comments have been numbered, and a log prepared. For ease of reference, the United States in this Response refers to individual comments by the log number assigned to the comment, with the exception of number 98, which is referred to as the ''Conway Report.''

manager of Town of Conway, New Hampshire (the ''Conway Report''). The other comments came primarily from individuals such as skiers, property owners, local business persons, and others. Many of the points made by individual commentors were spelled out in more detail in the Conway Report.

II. Response to Comments

A. Overview

Several comments (3, 67, 75, 76, 97) support the proposed Final Judgment. In particular they express approval of the provisions that require the divestiture of the Mt. Cranmore ski resort and related assets. These commentors note that economies of scale do not necessarily result in lower prices (76, 97) and that LBO Resort Enterprises (the predecessor to ASC) raised prices and eliminated discount voucher programs at Mt. Cranmore after acquiring it. (67, 97) ''LBO only discounts when their competition is discounting and impacting their skier visits and profit margin.'' (76) One commentor stated, ''We need more competition, not less competition, in this area.'' (97) The commentor also noted that the new owners of Mt. Cranmore would have as much or more interest as LBO in ensuring that Mr. Cranmore remains a healthy, vigorous competitor and in promoting the local economy. *Id.*

The majority of the comments submitted, however, including the Conway Report, expressed opposition, primarily to the provision of the proposed Final Judgment requiring divestiture of Mt. Cranmore. These comments can be arranged in a line of argument as follows:

—the antitrust laws should not apply to skiing;
—the Department misconceived the product markets for day and weekend skiing;
—the Department misconceived the geographic markets for eastern New England weekend skiing and for Maine day skiing;
—the proposed merger does not pose any anticompetitive problem;
—the proposed divestiture does not solve the anticompetitive problem alleged in the Complaint; and
—Mt. Cranmore is not viable except as part of the post-merger entity.

The comments in opposition to the proposed Final Judgment are addressed in the following sections of this Response and are arranged by the antitrust issues they raise.[3]

B. The Clayton Act Applies to Acquisitions in the Ski Industry

The Conway Report along with several commentors (12, 26, 32, 33, 56, 77, 82, 89) suggest that the antitrust laws should not apply to the ASC/S–K–I merger because skiing is a ''leisure activity.'' They maintain that the majority of skiers are middle- and upper-income people who pay for the activity with ''discretionary dollars.''

In general, however, the antitrust laws protect consumers in whatever markets they choose to spend their money. Specifically, Section 7 of the Clayton Act does not distinguish between leisure activities and other lines of commerce. Rather, subject to certain jurisdictional qualifications, Section 7 prohibits all acquisitions ''where in *any line of commerce or in any activity affecting commerce* in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.'' 15 U.S.C. § 18 (emphasis added). The provision of weekend and day skiing clearly constitute lines of commerce subject to Section 7 and other antitrust laws. The business of skiing comprises all services related to providing access to downhill skiing, including but not limited to, providing lifts; ski patrol; snowmaking; design, building; and grooming of trails; skiing lessons; and ancillary services such as food service, entertainment, and lodging. *See Aspen Highlands Skiing Corp* v. *Aspen Skiing Co.*, 738 F.2d 1509, *aff'd*, 472 U.S. 585 (1984) (jury in private antitrust case found relevant product market and injury in downhill skiing). Thus, the Department's antitrust analysis of the proposed merger of ski slopes is appropriate.

C. Downhill Skiing Is a Relevant Product Market for Antitrust Purposes

The Conway report asserts that the ''ski industry is not in competition with itself,'' but rather is part of a larger leisure and sports industry. For purposes of antitrust analysis, Conway and several commentors (22, 41, and 64) would define the relevant product market as all leisure and sports activities, including gambling, cruises, warm weather resorts, adventure/experience trips, shopping, theater, music, and professional sports. Conway at 18.

The Antitrust Division's review of mergers is governed by the Clayton and Sherman Acts, Supreme Court precedent, and the ''Horizontal Merger Guidelines'' issued jointly by the Department and the Federal Trade Commission in 1992. The standard for defining a relevant product market is set forth below:

> Specifically, the Agency will begin with each product (narrowly defined) produced or sold by each merging firm and ask what would happen if a hypothetical monopolist of that product imposed at least a 'small but significant and nontransitory' increase in price, but the terms of sale of all other products remained constant. If, in response to the price increase, the reduction in sales of the product would be large enough that a hypothetical monopolist would not find it profitable to impose such an increase in price, then the Agency will add to the product group the product that is the next-best substitute for the merging firm's product.

Horizontal Merger Guidelines § 1.11. *See Brown Shoe* v. *U.S.*, 370 U.S. 294 (1962).

Applying this standard to the present case, downhill skiing is the relevant product market. For purposes of this merger, downhill skiing differs from other winter recreational activities (such as cross-country-skiing, ice skating, snowmobiling, ice climbing, and cruises to warm weather resorts) and from all-weather activities (such as shopping and gambling), because as the Department's investigation showed, if prices at ASC resorts went up a small but significant amount after the merger (for example, by five percent without inflation or any quality improvements), people might switch where they went to ski, but they would continue to ski rather than switch to these other recreational activities. Typical downhill skiers would not switch to an activity such as ice-climbing, for example, just because the price of a downhill ticket increases by a small amount. They certainly would not switch in sufficient numbers to defeat a price increase. Based on this information, downhill skiing is the appropriate relevant product market for our analysis.

D. There Are Regional Geographic Markets for Weekend Skiing in Eastern New England and for Day Skiing in Maine

The Conway Report (p. 5) and commentors 34, 41, and 64 suggest that the relevant geographic market for purposes of analyzing the proposed acquisition is increasingly global in nature. Alternatively, Conway and numerous commentors (1, 8, 13, 14, 17, 19, 21, 25, 30, 33, 44, 47–50, 53–57, 62, 70–72, 78–81, 85, 86, 89) maintain that there are many resorts in the Mt.

[3] This Response addresses all of the antitrust issues that are raised in the comments and issues related to the substance of the Complaint and proposed Final Judgment. Unrelated arguments and objections are not discussed, such as complaints about statements reported in the press (32, 60). These comments are irrelevant to the issues of this case, and not properly subject of comment to which the Antitrust Division must respond under the Tunney Act.

Washington Valley, elsewhere in New England, and even in the western U.S. that compete with Mt. Cranmore. Therefore, the commentors assert that the Department's eastern New England/ weekend and Maine/day geographic markets are too narrow to be meaningful.

The standard for defining a relevant geographic market is set forth below:

> In defining the geographic market or markets affected by a merger, the Agency will begin with the location of each merging firm (or each plant of a multiplant firm) and ask what would happen if a hypothetical monopolist of the relevant product at that point imposed at least a 'small but significant and nontransitory' increase in price, but the terms of sale at all other locations remained constant. If, in response to the price increase, the reduction in sales of the product at that location would be large enough that a hypothetical monopolist producing or selling the relevant product at the merging firm's location would not find it profitable to impose such an increase in price, then the Agency will add the location from which production is the next-best substitute for production at the merging firm's location.

Horizontal Merger Guidelines § 1.21. *See Brown Shoe* v. *U.S.*, 370 U.S. 294 (1962).

Thus, the appropriate starting point for defining the relevant geographic market is the area in and around ASC's and S–K–I's resorts. If ASC could impose a ''small but significant and nontransitory'' price increase after the merger (for example, five percent) without causing a sufficient number of skiers to switch to ski slopes in other geographic areas and defeat the price increase, then the appropriate geographic market is limited to these locations. Resorts in other geographic regions of the country or abroad should not be included in the relevant geographic market.

The Department's investigation revealed that geographic markets for weekend and day skiing are indeed regional, rather than national or international. Skiers are not willing to travel an unlimited distance to ski. Traveling to distant ski resorts imposes a burden on the skier, either in the form of excessive driving time or large additional expense for airfare. The determinative factors in how far people are willing to travel for skiing are the duration of the trip (*e.g.*, single day, weekend, extended vacation), the qualitative aspects of the particular resort (*e.g.*, number of trails and lifts, variety and difficulty of trails, snowmaking, night skiing, accommodations, and other amenities), and price. Ski resorts may compete in several markets—quite local markets for day skiers, larger markets for weekend skiers, and quite large markets for extended skier vacations. Because ski resorts can offer different prices in these different markets, each one is appropriate for antitrust analysis.

Prior to the proposed acquisition, ASC and S–K–I each operated a total of four ski resorts in Maine, New Hampshire, and Vermont. They were the two largest owner/operators of ski resorts in New England, and this transaction would have combined eight of the largest ski resorts in this region. The Department's investigation revealed that ASC and S–K–I competed directly and significantly for two distinct groups of skiers—eastern New England weekend skiers (i.e., those in Maine, eastern Massachusetts and Connecticut, and Rhode Island) and Maine day skiers. Although other categories of skiers (*e.g.*, skiers from other areas and skiers on extended vacation) visit ASC's and S–K–I's resorts, those skiers were not adversely affected by the merger. The proposed acquisition substantially increased concentration only among the ski resorts to which eastern New England residents practicably could go for weekend ski trips, and to which Maine residents practicably could go for day ski trips. As a result, the acquisition threatened to raise the price of, or reduce discounts for, weekend and day skiing to consumers living in these areas.

1. Eastern New England Weekend Skiers

Eastern New England residents who wish to ski over a weekend can feasibly turn only to a limited number of resorts with adequate services (*e.g.*, accommodations, number and variety of trails, and other amenities) and that are located nearby in Maine, New Hampshire, Vermont, or western Massachusetts. These are the resorts that have the necessary qualities and are within a reasonable traveling distance for eastern New England weekend skiers.

The Department considered the ski areas identified by the Conway Report along with many others as potential choices for New England weekend skiers. Of the fourteen resorts identified by the Conway Report, four would have been owned by ASC after the acquisition as originally proposed. Smaller ski resorts among the fourteen (such as King Pine, Shawnee Peak, Black Mountain, and Gunstock) and other resorts located farther away (such as New York, the West Coast, and abroad) cannot, and after this transaction would not, constrain prices charged to weekend skiers living in eastern New England. The smaller resorts lack the qualitative aspects previously identified (number of trails and lifts, variety and difficulty of trails, snowmaking, night skiing, accommodations, and other amenities) and the more distant resorts are too far away to constrain a small but significant price increase after the merger of ASC and S–K–I resorts. Although eastern New England skiers occasionally choose to ski at these smaller or even more distant resorts, skiing at such resorts is not a practical or economic alternative for most eastern New England weekend skiers most of the time.

Ski resorts in Maine, New Hampshire, Vermont, and western Massachusetts that have the necessary qualities and services to attract weekend skiers from eastern New England can charge different effective prices to these skiers than they charge to others. Eastern New England weekend skiers can be identified easily by the ski resorts that are reasonable alternatives for these consumers. These ski resorts can charge eastern New England weekend skiers different prices than charged to day skiing customers, to customers coming from other parts of the country, or to customers who stay longer than a weekend. For example, ski resorts can offer coupons for discounted lift tickets packaged with lodging and/or airfare, either through direct mail or through advertising in local papers in the New York, Washington D.C., or Atlanta metropolitan areas, and not offer such coupons in eastern New England. A single firm controlling all the resorts in Maine, New Hampshire, and Vermont with the most attractive qualities and services for weekend skiing would be able to raise prices a small but significant amount to eastern New England weekend skiers without losing sufficient business to smaller or more distant resorts to make the price increase unprofitable.

Based on this analysis, the Department concluded, and maintains, that the provision of weekend downhill skiing to eastern New England residents is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

2. Maine Day Skiers

Before the proposed acquisition, ASC provided skiing to Maine day skiers primarily at its Sunday River, Attitash/ Bear Peak, and Mt. Cranmore ski resorts. S–K–I provided skiing to Maine day skiers primarily at its Sugarloaf resort. The acquisition would have brought these alternatives for Maine skiers under common ownership and control. Moreover, the ASC acquisition as proposed would have eliminated Waterville Valley as a non-ASC-owned resort that Maine day skiers could consider. Maine residents feasibly can turn only to resorts in Maine and eastern New Hampshire for day skiing trips. These are the resorts that are within a reasonable traveling distance for Maine day skiers.

Ski resorts located farther from Maine and eastern New Hampshire cannot, and after this transaction would not, constrain prices charged to day skiers living in Maine. Although Maine skiers occasionally choose to ski at such more distant resorts, skiing at such resorts is not a practical or economic alternative for most Maine day skiers most of the time.

Ski resorts in Maine and eastern New Hampshire easily can charge different prices to Maine day skiers than they charge to other skiers. Maine day skiers, for example, can be identified by the ski resorts that are reasonable alternatives for these consumers to drive to for a day of skiing. These ski resorts can charge Maine day skiers different effective prices than those charged to out-of-state skiers or to Maine skiers who stay multiple days. A single firm controlling all the ski resorts in Maine and eastern New Hampshire would be able to raise prices a small but significant amount to Maine day skiers (mainly by reducing or eliminating discounts) without losing so much business as to make the price increase unprofitable.

Based on this analysis the Department concluded, and maintains, that the provision of day skiing to Maine residents is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

The Conway Report makes the following assertions:

—within an hour and fifteen minutes of North Conway there are fourteen ski areas that create a competitive market place for Maine day skiers (Conway at 5–6);
—data from 1996 shows that Mt. Cranmore had 125,000 skier visits of which 6,500 (5.3%) were from Maine and Attitash had 201,000 skier visits of which 4,422 (2.2%) were from Maine compared with 92,846 total skier visits from Maine to the state of New Hampshire; thus, Maine skiers already have sufficient alternatives (*Id.* at 8);
—the Maine Attorney General's Office negotiated a pricing discount program for Maine residents ''which the DOJ is apparently satisfied with'' (*Id.* at 9).

As with New England weekend skiers, the Department considered all fourteen of the ski areas identified in the Conway Report along with many others in its analysis of the competitive consequences of the proposed merger on Maine day skiers. Of the fourteen ski areas identified in the Conway Report, three (Cranmore, Attitash, and Sunday River) were owned by ASC and one (Waterville Valley) was owned by S–K–I. Many of the other smaller resorts lack the qualitative aspects previously identified (number of trails and lifts, variety and difficulty of trails, snowmaking, night skiing, and other amenities) to constrain a small but significant price increase after the merger of ASC and S–K–I resorts. Moreover, although many of these resorts are within an hour and fifteen minutes of North Conway, the focus of our inquiry is on the distance for day skiers from population centers in Maine. Many skiers from Portland, Maine, for example, would not find it practical to drive an additional hour and fifteen minutes beyond North Conway, where Mt. Cranmore is located (an hour and a half or more trip for Portland residents), for a day ski trip. For these residents, the Maine resorts along with Mt. Cranmore and Attitash in eastern New Hampshire are the most feasible resorts for day skiing.

Rather than focus on the percentage of Maine skier visits to Mt. Cranmore compared to total New Hampshire skier visits from Maine, the Department believes the appropriate focus should be on the practical alternatives available to the Maine day skier after the merger that could constrain a small but significant price increase by ASC. Prior to the proposed acquisition, Sunday River (ASC) and Sugarloaf (S–K–I) in Maine and Mt. Cranmore and Attitash (ASC) in New Hampshire provided practical and viable alternatives in terms of distance, qualitative aspects, and price competition for Maine day skiers. After the acquisition ASC would own Sunday River, Sugarloaf, and Attitash. With the divestiture of Mt. Cranmore, the Department believes Maine day skiers will have a feasible and attractive competing alternative to ASC resorts in Maine and New Hampshire. According to the Conway Report statistics, Mt. Cranmore already receives almost one and one-half times more skier visits from Maine than Attitash. The divesture provides the opportunity for even more Maine day skiers to ski Mt. Cranmore as an alternative to ASC resorts in the immediate vicinity and to constrain noncompetitive price increases by ASC.

The Maine Attorney General's Office did negotiate a pricing discount program with ASC for Maine residents. However, the program is a percentage-based program. It requires ASC at its Sunday River and Sugarloaf resorts to compute a ratio of the average resident and non-resident ticket prices for the 1995–96 season and maintain that ratio in future years. The Department generally prefers not to attempt to remedy anticompetitive mergers with price regulation, but rather to ensure that there is a structurally competitive marketplace that will provide competitive pricing and high quality goods and services on its own as a result of the competition. By preserving Mt. Cranmore as a competitive alternative to ASC ski resorts, the Department believes the marketplace itself will provide lower prices, higher quality services, and attractive alternatives for Maine day skiers.

E. The Proposed Merger Is Likely To Result in Increased Prices or Reduced Discounts in the Two Markets as Alleged

The Conway Report and commentors raise several issues about pricing:

—the merger is not anticompetitive because it does not create a single-firm monopoly (Conway at 6);
—the Department has not shown that a price increase will result from the merger (*Id.* at 14);
—economies of scale may actually allow reduction in ticket prices (commentors 9, 22, 53, 84);
—the Department has not shown that price increases will be ''unacceptable to the public;'' higher prices are ''justified and acceptable to skiers when there is an increase in the level of services,'' which should be taken into account (Conway at 6); price increases would reflect improved conditions that LBO brings to the resort, not monopoly pricing (commentors 12, 25).

The purpose of the Department's review of mergers under the antitrust laws is to identify and challenge mergers that reduce competition, facilitate the creation or exercise of market power, or threaten to increase prices or reduce product quality to consumers. The Clayton Act does not require the Untied States to wait until there is an actual single-firm monopoly created by the merger, nor does it require the Department to violate the antitrust laws. It simply requires a showing that the effect of an acquisition ''*may be* substantially to lessen competition, or to *tend to* create a monopoly.'' 15 U.S.C. § 18 (emphasis added). Market power can be exercised through supracompetitive prices in market structures that are well short of an actual monopoly. The Department's analysis of the ASC transaction predicted that the new entity as originally proposed would have had sufficient market power to impose price increases.

In its analysis of post-merger market power, the Department also considers and evaluates potential efficiencies of the proposed transaction that could bring improved service or lower prices to consumers. In the present transaction the Department determined that any efficiencies resulting from the proposed merger that were obtainable by ASC in operating multiple resorts were not sufficient to offset the potential for price increases as a result of the market power acquired by ASC after the merger.

Moreover, the proposition that price increases after the acquisition might be ''acceptable'' to the public would confirm that the markets at issue are properly defined and threatened with loss of competition. It could mean not only that consumers would face higher prices, but not have adequate competitive alternatives to which they could turn. Furthermore, the policy underlying the antitrust laws as enacted by Congress and applied by the courts is that competition is the best way to achieve the optimal combination of price and quality. An antitrust analysis evaluates a merger by considering that the quality of the product or service is held constant in determining whether the merged entity would have sufficient market power to impose a small but significant price increase on consumers. Price increases that proportionally reflect improvements in quality or service are not considered anticompetitive.

The Conway Report and several commenters also state:

—skiers do not make their decision where to ski solely on price; other factors are ski conditions, ski terrain, lift facilities, snowmaking, and amenities (Conway at 14; commentors 9, 14, 15, 22, 23, 26, 54, 61, 93);
—if the merger results in an anticompetitive price increase, people will stop skiing (commentors 22, 25, 34, 58, 72, 77) or other resorts will expand output and undercut those prices (Conway at 15; commentor 43); state-owned mountains in New Hampshire (Sunapee and Cannon) provide price control (commentors 47–49, 55, 57, 62);
—the merger will hold prices down by encouraging more mid-week skiers (commentor 73).

The Department did consider factors such as ski conditions, ski terrain, lift facilities, snowmaking, and amenities in defining the product market. The determinative factors in how far people are willing to travel for skiing at a particular mountain are the duration of the trip (*e.g.*, single day, weekend, extended vacation), the qualitative aspects of the resort (such as those outlined above), and price. The lack of these qualitative factors are the very reason many of the smaller resorts identified in the Conway Report are not feasible alternatives for substantial numbers of New England weekend skiers.

In its analysis of the market power that ASC would have after its acquisition of S–K–I, the Department considered whether people would stop skiing if prices increased at ASC resorts or switch to other resorts that had lower prices. Although some New England weekend skiers and Maine day skiers may choose to stop skiing or to ski at smaller resorts with less desirable qualitative aspects in response to a small but significant price increase by ASC, they would not do so in sufficient numbers to defeat such a price increase. The typical downhill skier who goes to ASC resorts for the qualitative experience is unlikely to stop skiing or switch to smaller resorts with less amenities because ticket prices increase by a small amount, such as five percent.

Moreover, many of the smaller resorts are unlikely to be able to expand facilities within a timely fashion to defeat an anticompetitive price increase. For example, to increase the number of lifts and trails or add snowmaking or night skiing capability would take these resorts more than two years in most cases and/or require a long regulatory approval process if their resort is on national forest land.

F. The Proposed Divestiture Solves the Anticompetitive Problem Alleged in the Complaint

Commentors 11, 43, and 45 suggested that if the Department had concerns about the ASC/S–K–I acquisition, it should have required ASC to divest a larger resort, such as Killington or Sunday River, instead of smaller resorts like Waterville Valley and Cranmore.

In analyzing the proposed Final Judgment, ''the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.), *cert. denied*, 114 S.Ct. 487 (1993) (emphasis added, internal quotation and citation omitted). The relief in the proposed Final Judgment is sufficient to preserve competition for eastern New England weekend and Maine day skiers.

Before the proposed acquisition, Sunday River (ASC) and Sugarloaf (S–K–I) in Maine; Mt. Cranmore (ASC), Attitash (ASC), and Waterville Valley (S–K–I) in New Hampshire; and Sugarbush (ASC), Killington (S–K–I), and Mt. Snow (S–K–I) in Vermont all provided practical and viable alternatives in terms of distance, qualitative aspects, and price competition for New England weekend and Maine day skiers. After the acquisition ASC would own Sunday River, Sugarloaf, Attitash, Sugarbush, Killington, and Mt. Snow. By reaching an agreement to divest Mt. Cranmore and Waterville Valley, New England weekend and Maine day skiers will continue to have sufficient feasible and attractive alternatives to ASC resorts. Divesting Killington or another Vermont resort, for example, would have been of no benefit to Maine day skiers.

Moreover, the divestitures ordered in the proposed Final Judgment will resolve the substantial increase in concentration brought about by the proposed transaction. With these divestitures, the post-merger HHI [4] for the eastern New England weekend skiing market will be below 1800, and the parties' post-merger share of that market will be less than 40 percent. The post-merger HHI for the Maine day skiing market will be slightly over 1900 with these divestitures, and that parties' post-merger share of that market will be less than 35 percent. Given these post-divestiture HHI levels, the combined firm's post-divestiture market shares, and the number and size of independent ski resorts remaining in the affected markets, the proposed transaction is not likely to lead to an unilateral anticompetitive effect or to a higher probability of coordinated behavior, provided the divestitures are made.

G. Unique Aspects of Mt. Cranmore

The Conway Report and several commentors suggest that there are a

[4] ''HHI'' is an abbreviation for the Herfindahl-Hirschman Index, a commonly accepted measures of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2+30^2+20^2+20^2=2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in moderately concentrated and concentrated markets presumptively raise antitrust concerns under the Department of Justice and Federal Trade Commission 1992 *Horizontal Merger Guidelines.*

number of unique aspects of Mt. Cranmore that should be considered:

—there are various economies associated with operating and marketing Attitash/Bear Creek together with Mt. Cranmore; these economies will be lost if Mt. Cranmore is divested, making Mt. Cranmore less viable (Conway at 13; commentor 94);

—the proposed Final Judgment reduces options for consumers because it eliminates the Attitash/Cranmore joint ticket now offered through ASC (commentors 1, 16, 21, 30, 32, 50, 63, 66, 70, 72, 77, 80, 85, 86); and the Department is incapable of determining whether the prospective buyer will be a strong operator (commenter 32);

—divestiture would have a significant adverse economic impact on the area around Mt. Cranmore (Conway at 12–13; commentors 2, 5, 12, 14, 17–19, 22–25, 29, 31, 33–36, 38, 43, 47–53, 55, 57, 59–62, 64, 65, 68, 69, 74, 83, 84, 91–96);

—Mt Cranmore cannot survive on a stand alone basis (Conway at 12–13; commentors 2, 5, 15–18, 23, 28, 29, 34, 37, 38, 41, 45, 50, 59, 61, 63, 64, 66, 69, 71, 78, 85, 86, 89, 94); it needs to be part of a larger organization because of economies in marketing (Conway at 12–13; commentors 2, 9, 19, 21, 23, 26, 28–30, 54, 64, 77, 90, 96);

—Cranmore was struggling to survive before ASC purchased it; ASC has invested heavily in Mt. Cranmore—in snowmaking equipment, lifts, and marketing (Conway at 12–13; commentors 1, 2, 4–10, 12, 13, 15–18, 22, 24–29, 37–39, 40, 41, 42, 46, 50, 54, 56, 58, 60, 61, 63, 66, 69–72, 77, 79, 80–82, 87, 88, 89, 90, 93, 95).

There probably are some economies associated with operating and marketing Mt. Cranmore together with ASC's other ski resorts. But most relevant economies of scale, such as large-scale purchasing of lifts and equipment and sharing overhead and administrative staff, also can be obtained if Cranmore is purchased by another owner that operates multiple ski resorts. Economies of scale associated with being part of a larger organization are not unique to ASC, and there is no reason to think they will be lost as a result of a divestiture of Cranmore to another operator with multiple resorts.

Regarding joint tickets for both Attitash and Cranmore, nothing prohibits the new owner of Cranmore, for example, from entering into joint ticket arrangements with Attitash or other ski resorts for tickets that would be good at any of the cooperative resorts. Moreover, if Cranmore and Waterville Valley were divested to the same buyer, the new owner could offer a joint ticket to these two resorts. In the past, sales revenues from one joint Attitash/Cranmore ticket has been at most less than four percent of Cranmore ticket revenues. Only one percent of Cranmore ticket purchasers have paid the nominal upgrade fee to be able to ski Attitash. If anything, the lack of a joint ticket would seem to hurt Attitash, not Cranmore, by this measure. Given the ability to continue offering joint ticket arrangements with other resorts, the separation of ownership of Attitash and Cranmore should not be a significant factor in the decision to divest Cranmore.

It clearly advances the Department's goal that a financially strong buyer with good management skills be found to purchase Mt. Cranmore. The whole purpose behind the divestiture is to maintain Mt. Cranmore as a healthy, vigorous, independent competitor to ASC. Such competition should spur increasingly improved ski services and conditions while maintaining competitive pricing. Although the Department cannot guarantee the financial success of the new purchaser of Mt. Cranmore, the Department does have experience in evaluating the strength and potential success of prospective purchasers in consent decree cases over the years, and believes it can do so in this case.

The Department recognizes that maintaining Mt. Cranmore as a healthy, vigorous competitor not only is important to competition, but also is very important to the citizens and businesses located near Mt. Cranmore in the Mount Washington Valley. In performing a merger analysis, the Department's responsibility is to prevent violations of the antitrust laws and to preserve competition. The principle that underlines the antitrust laws enacted by Congress is that vigorous, free market competition is the best way to protect the economy. The Department is not charged, and it would be beyond its appropriate sphere if inquiry, to evaluate directly—and base its enforcement decisions on—the economic impact of the collateral spending of consumers in areas other than the product markets being investigated. Rather, this interest is considered and protected indirectly by protecting a competitive free market and, in the specific case of a divestiture, in ensuring the viability of the divested assets as a vigorous competitor. Preserving Mt. Cranmore as a vigorous competitor is the essence of the relief sought in the consent decree; by protecting competition, the proposed relief also should protect collateral spending by consumers and the resulting local economic vitality.

Whether Mt. Cranmore can survive as a strong competitor on a stand-alone basis is one of the factors the Department will evaluate in analyzing the suitability of potential purchasers. The proposed divesture would allow Cranmore and Waterville Valley to be sold to a single purchaser as one option. Moreover, the benefits that ASC brought to Mt. Cranmore by investing in snowmaking equipment, and marketing will enure to the benefit of the new purchaser and put Cranmore in that much better position to be a strong competitor to ASC.

III. The Legal Standard Governing the Court's Public Interest Determination

Once the United States moves for entry of the proposed Final Judgment, the Tunney Act directs the Court to determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e). In making that determination, ''the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is *within the reaches* of the public interest.'' *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.) *cert. denied*, 114 S. Ct. 487 (1993) (emphasis added, internal quotation and citation omitted).[5] The Court should evaluate the relief set forth in the proposed Final Judgment and should enter the Judgment if it falls within the government's ''rather broad discretion to settle with the defendant within the reaches of the public interest.'' *U.S.* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995). *Accord United States* v. *Associated Milk Producers*, 534 F.2d 113, 117–18 (8th Cir. 1976), *cert. denied*, 429 U.S. 940 (1976).

The Court is not ''to make *de novo* determination of facts and issues.'' *Western Elec.*, 993 F.2d at 1577. Rather, ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.'' *Id.* (internal quotation and citation omitted throughout), In particular, the Court must defer to the Department's assessment of likely competitive consequences, which it may reject ''only

[5] The *Western Electric* decision concerned a consensual modification of an existing antitrust decree. The Court of Appeals assumed that the Tunney Act was applicable.

if it has exceptional confidence that adverse antitrust consequences will result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency.'' *Id.*[6]

The Court may not reject a decree simply ''because a third party claims it could be better treated.'' *Microsoft,* 56 F.3d at 1461 n.9. The Tunney Act does not empower the court to reject the remedies in the proposed Final Judgment based on the belief that ''other remedies were preferable.'' *Id.* at 1460. As Judge Greene has observed:

> If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preserved.

United States v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983) (Mem.).

Moreover, the entry of a governmental antitrust decree forecloses no private party from seeking and obtaining appropriate antitrust remedies. Defendants will remain liable for any illegal acts, and any private party may challenge such conduct if and when appropriate. The issue before the Court in this case is limited to whether entry of *this* particular proposed Final Judgment, agreed to by the parties as settlement of *this* case, is in the public interest.

Further, the Tunney Act does not contemplate judicial reevaluation of the wisdom of the government's determination of which violations to allege in the Complaint. The government's decision not to bring a particular case on the facts and law before it at a particular time, like any other decision not to prosecute, ''involves a complicated balancing of a number of factors which are peculiarly within [the government's] expertise.'' *Heckler* v. *Chaney,* 470 U.S. 821, 831 (1985). Thus, the Court may not look beyond the Complaint ''to evaluate claims that the government did *not* make and to inquire as to why they were not made.'' *Microsoft,* 56 F.3d at 1459 (emphasis in original); *see also Associated Milk Producers,* 534 F.2d at 117–18.

Finally, the government has wide discretion within the reaches of the public interest to resolve potential litigation. *E.g., Western Elec. Co.,* 993 F.2d 1572; *AT&T,* 552 F. Supp. at 151. The Supreme Court has recognized that a government antitrust consent decree is a contract between the parties to settle their disputes and differences, *United States* v. *ITT Continental Baking Co.,* 420 U.S. 223, 235–38 (1975); *United States* v. *Armour & Co.,* 402 U.S. 673, 681–82 (1971), and ''normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.'' *Armour,* 402 U.S. at 681. This Judgment has the virtue of bringing the public certain benefits and protection without the uncertainty and expense of protracted litigation. *Armour,* 402 U.S. at 681; *Microsoft,* 56 F.3d at 1459.

IV. Conclusion

After careful consideration of these comments, the United States concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is in the public interest. The United States will therefore move the Court to enter the proposed Final Judgment after the public comments and this Response have been published in the Federal Register, as 15 U.S.C. § 16(d) requires.

Dated: October 16, 1996.

Respectfully submitted,

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Certificate of Service

On October 16, 1996, I caused a copy of the United States' Response to Public Comments relating to the Proposed Final Judgment (with the comments) to be served by facsimile and first-class mail upon defendants in this action. A courtesy copy (without the comments) will be mailed to each commentor as soon as practicable.

Barry L. Creech

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7. Beverly Mellen	II.G
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9. Gary P. Farmer	II.E, II.G
10. Mr. and Mrs. Bradford L. Boynton.	II.G
11. Bill Glenn	II.F
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14. Mr. and Mrs. Richard Check.	II.D, II.E, II.G
15. John E. Hogan	II.E, II.G
16. Lawrence Fouraker, Ph.D..	II.G
17. Mr. and Mrs. Thomas O'Connor.	II.D, II.G
18. Mr. and Mrs. Arthur J. Brissman.	II.G
19. Harold C. Fisher	II.D, II.G
20. Professor Stephen F. Ross (withdrawn by commenter).	Not Applicable.
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[6] The Tunney Act does not give a court authority to impose different terms on the parties. *See, e.g.,* United States v. American Tel. & Tel. Co., 552 F. Supp. 131, 153 n. 95 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983)(Mem.); *accord* H.R. Rep. No. 1463, 93d Cong., 2d Sess. 8 (1974). A court, of course, can condition entry of a decree on the parties' agreement to a different bargain, *see, e.g., AT & T,* 552 F. Supp. at 225, but if the parties do not agree to such terms, the court's only choices are to enter the decree the parties proposed or to leave the parties to litigate.

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70. Charles Morse, Jr	II.D, II.G
71. Jack B. Middleton	II.D, II.G
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74. Calvin J. Coleman	II.G
75. David S. Urey	II.E
76. Maryellen LaRoche	II.A
77. Cynthia B. Briggs	II.B, II.E, II.G
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79. John B. Pepper	II.D, II.G
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66. Sally Hindson, 1640 Plaintiff Pike, Cranston, RI 02920–1320
67. Dennis J. Holland, Marcia A. Burchstead, 35 Skyline Drive, P.O. Box 826, Intervale, NH 03845
68. George J.R. Sauer, 45 Fuller Street, Dedham, MA 02026
69. John C. Conniff, 157 Pleasantview Avenue, Longmeadow, MA 01106
70. Charles Morse, Jr., 19 Green Street, Newbury, MA 01951
71. Jack B. Middleton, McLane, Graf, Raulerson & Middleton, Nine Hundred Elm Street, P.O. Box 326, Manchester, NH 03105–0326
72. Robert E. Adair, 150 Old Westside Road, North Conway, NH 03860
73. William D. Quinn, P.O. Box 21, Madison, NH 03849
74. Calvin J. Coleman, Alvin J. Coleman & Son, Inc., RR 1, Box 120, Route 16, Conway, NH 03818
75. David S. Urey, TechWorks, 15 Kancamagus Estates, P.O. Box 337, Conway, NH 03818
76. Maryellen LaRoche, P.O. Box 110, 277 Stark Rd., Conway, NH 03818

77. Cynthia B. Briggs, Locust Hill, P.O. Box 427, North Conway, NH 03860
78. James H. Hastings, 55 Stetson Street, Bradford, MA 01835
79. John B. Pepper, P.O. Box X, Jackson, NH 03846
80. Priscilla Morse, 19 Green St., Newbury, MA 01951
81. Peter B. Edwards, P.O. Box 1915, North Conway, NH 03860
82. David Peterson, Glass Graphics, Inc., P.O. Box 1199, 56 Pleasant Street, Conway, NH 03818
83. Miriam L. Regan, Box 345, Intervale, NH 03845
84. Mr. and Mrs. Robert Fisher, 615 Potter Road, Center Conway, NH 03813
85. Christopher J. Cote, 29 Essex Street, Lowell, MA 01850
86. Mr. and Mrs. Ronald F. Cote, 29 Essex Street, Lowell, MA 01850
87. Douglas C. Albert, President, Albert Farms/Maine Turf Company, RR 1, Box 103, Fryeburg, ME 04037
88. Conrad Briggs, Locust Hill, Box 427, 267 Kearsarge Road, North Conway, NH 03860
89. Richard A. Ware, Hurricane Mtn. Farmhouse, P.O. Box 310, Intervale, NH 03845
90. Stephen P. Camuso, 14 Cranmore Circle, North Conway, NH 03818
91. Dr. Alfred C. Peters, Topnotch, P.O. Box 536, Glen, NH 03838
92. Joan M. Moeltner, National Federation of Independent Business, 600 Maryland Avenue S.W., Suite 700, Washington, D.C. 20024
93. Fred C. Anderson, General Manager/CEO, New Hampshire Electric Cooperative, Inc., RR#4, Box 2100, Tenney Mountain Highway, Plymouth, NH 03264–9420
94. Ronald and Pamela Barber, 364 Thompson Road, North Conway, NH 03860
95. Honorable William E. Williams, Jr., House of Representatives, State of New Hampshire, Committee on Resources, Recreation and Development, State House, Concord, New Hampshire 03301
96. Mr. A.O. Lucy, Executive Director, Mount Washington Valley Chamber of Commerce & Visitors Bureau, P.O. Box 2300, North Conway, NH 03860
97. Richard M. Chrenko, P.O. 913, West Side Road, Glen, NH 03838–0913
98. ''Conway Report'', Mt. Washington Valley/Mt. Cranmore Task Force, James B. Somerville, Chairman, Town of Conway, P.O. Box 70, Center Conway, NH 03813–0073

The Berkals

June 18, 1996.

Anne K. Bingaman,

U.S. Assistant Attorney General, Anti-Trust Division, Justice Department, Washington, DC 20530

Dear Madam: We sincerely hope that you do not force America Skiing to sell Mt. Cranmore.

We have been skiing there for well over twenty years, and no other owner has done as much to improve the skiing at this area. We were absolutely delighted with the improvements made last year. The interchangeable ticket between Attitash and Cranmore is a great draw for tourists. I trust that you are aware that Mt. Cranmore was for sale for some time before it was purchased by LBO.

This section of New Hampshire has other areas which provide competition within a reasonable driving distance, such as Black Mountain, Wildcat Mountain, Bretton Woods, Loon, King Pine and Shawnee Peak, all within a fifteen to forty-five minute drive.

We were all justifiably enthused when LBO Resort Enterprises bought Mt. Cranmore, and we trust that the decision to force the corporation to dispose of Mt. Cranmore will not be enforced, as we feel it is not in the best interest of the public or the community.

Yours very truly,

Betty Berkal, etc.

Pinkham Real Estate

June 18, 1996.

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Washington, DC 20530

Dear Mr. Conrath: I was horrified to hear the news that Les Otten has been ordered to sell Cranmore Mountain Ski Area. Cranmore is the life blood of our economy here in North Conway and the keystone to Mt. Washington Valley. It is the thread by which North Conway's economic health hangs. As a ski area, it is completely incapable of standing alone in today's ski market. Past performance has already proven that. Forcing it to do so again means disaster, not just for Cranmore, but for this town.

Cranmore isn't a Fleet Bank or Bank of Boston that apparently can merge without protest. It isn't even a Stowe or a Sugarbush, or indeed a Waterville Valley among ski areas. It's a little hill with wide slopes and pleasant trails and a verticle drop that poses no competitive threat to ski areas such as these. However, it happens to be located right in North Conway village, which feels its every economic shiver. For the past seven years this village has been freezing.

After a year of LBO's management, when Cranmore and North Conway finally felt a resurgence of business, what kind of unconscionable bureaucracy is this that would shove this unassuming little business back out in the cold and imperil the lives and jobs of an entire town? If it is fear of the merged firm raising prices, don't they realize Cranmore *as an independent business* would have to raise prices to afford the kind of continuing capital investment, management and marketing dollars necessary to offer skiers a competitive product? A bit of history may serve to illustrate what this business means to the town.

Cranmore was founded in the late 1930s by Harvey Gibson, a local boy who had made good, not to show a profit, but to return something to his home town. During the three decades that followed—as with most businesses heavily dependent on the weather—it was never a big money maker, but it was able to pay its bills. However, in 1970 a snow drought forced it to its knees. Skiers left for other areas that had had the dollars for snow-making, or the size and altitude not to require it. The town responded. Over 100 people, most from this little village of 2,500, put down hard earned dollars to enable the mountain to buy snow-making equipment. The Manchester Union Leader headlined it as a town raising itself by its own bootstraps. I was owner/operator of North Conway's Eastern Slope Inn at the time, and I've never seen a community so aware of the importance of one business to the economic future of all.

Since then, ski areas have required bigger and bigger investments to stay competitive: partial snow making had to be extended to 100% cover; T Bars had to become chair lifts; chair lifts have had to become detachable quads; base stations—like the historic one at Cranmore—have had to be modernized, and louder marketing voices are needed to meet the increasing competition from inexpensive package plans to the big areas in the Rockies and the Alps. Nowhere is the major investment required by a business more obvious and open to the buying public than in a ski area, where a skier can tell within minutes whether or not its product is competitive.

During recent years, Cranmore has been owned by people who just wanted to say they owned a ski area. Like a yacht, if you had to ask how much it cost, you couldn't afford it. Today's costs have removed ski areas from the toy department. Without the assistance of a larger organization, to take advantage of economy of scale, Cranmore is doomed. And so is the village and town around it.

This past year of LBO ownership has rejuvenated our local economy. From 1990 to 1993 I was President of the Mt. Washington Valley Chamber of Commerce, which doubles as our regional marketing organization. For most of that period Cranmore existed at the pleasure of the banks, as did much of the town. Though blessed with a historically faithful clientele, skiers could no longer resist the lure of areas with bigger, faster and more modern equipment. LBO changed that. In my real estate business I have been able to observe the LBO effect perhaps more closely than most. I've seen people buying here this year with confidence again in Cranmore's future. And North Conway's. That can all end if this decision is allowed to stand.

The decision to make LBO divest of Cranmore must have been made solely by mathematics: LBO has such and such percentage of the market, therefore it must be harmful to the ski industry and/or skiers. Believe me when I say, should the ruling be enforced, a whole town will suffer.

I would ask those that made the ruling visit the elephants of the American and Canadian skiing west and then take a look at the little mouse-like knoll we call Cranmore.

Sincerely,

Charles Peter Pinkham.

cc: Congressman Bill Zeliff

Beth C. Lincoln

June 21, 1996.

Dear Mr. Conrath: I am very much in favor of the Justice Department's action to force the sale of Mt. Cranmore by Les Otten.

LBO is only interested in profit, and apparently has no concern for people or the community. He has clearly demonstrated this, and his lack of integrity, by his actions at Athtash-Bear Peak. He attempts to manipulate the community by deceit and smooth talking. He charges premium prices and pays almost minimum wages (as well as no benefits, and hour by hour layoffs).

I am a very private person, & do not wish my name used publicly. However, I did wish to express my approval of your action.

Sincerely,

Beth C. Lincoln,

Box 119, Bartlett, NH 03812, 603–374–6033

Dr. Theodore Goldberg

June 21, 1996.

Dear Mr. Conrath: I have not seen or felt such enthusiasm either on Mt. Cranmore or in the Valley as was shown this past winter under Les Otten's ownership.

My children & grandchildren learned to ski on Cranmore & we have been dismayed at the determination over the past 15 years.

Since the Otten [mgmt] purchases the mountain a feeling of revitalization has taken hold in the entire valley. If he is not allowed to continue this progress the area will revert to lethargy.

Sincerely,

Dr. Theodore Goldberg,

Box 283, N. Conway, NH 03860

Charlotte Emmel

June 21, 1996.

Dear Mr. Conrath: This is to strongly urge that the Justice Dept. reconsider its decision to force Les Otten of LBO Enterprises to divest itself of Cranmore Mt. before SKI Limited can be acquired.

This news was devastating to this area (Mt. Washington Valley where Cranmore is located in North Conway). For years Cranmore has been steadily going down hill because the different owners simply did not have the funds to improve the mountain to make it competitive. This has cost many jobs and has had an effect on the tourist industry which the area relies on. When LBO purchased Cranmore last year, I believe *everyone,* without exception, was overjoyed—residents of the area and skier visitors alike. He pumped money into it and everyone was very excited about the plans he had to further develop the mountain. You may be delivering a death blow to the mountain if you carry through on forcing LBO to divest itself of Cranmore—and I *beg* you to reconsider.

Sincerely,

Charlotte Emmel

Evelyn Whelton

June 21, 1996.

Craig W Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H St., NW., Washington DC 20530

Re: Divesting, Cranmore Mountain, North Conway, NH

You are dealing with a ski resort in New Hampshire, that was dying and bringing the town down with it. We finally found someone that was willing to make a commitment to all of us and make this the first rate ski area it used to be.

The bottom line here is this:

The future of the New Hampshire Ski industry
The future of Mt. Washington Valley
The future of all who live here and struggle to make a living

Please look this over again and I am sure you will recognize that as a small community we can only benefit letting LBO keep Cranmore Mountain.

Thank you,

Evelyn Whelton,

PO Box 176, Madison, NH 03849.

Beverly Mellen

June 21, 1996.

Craig W Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H St., NW., Washington, DC 20530

Re: Divesting, Cranmore Mountain, North Conway, NH

You are dealing with a ski resort in New Hampshire, that was dying and bringing the town down with it. We finally found someone that was willing to make a commitment to all of us and make this the first rate ski area it used to be.

The bottom line here is this:

The future of the New Hampshire Ski industry
The future of Mt. Washington Valley
The future of all who live here and struggle to make a living

Please look this over again and I am sure you will recognize that as a small community we can only benefit by letting LBO keep Cranmore Mountain.

Thank you,

Beverly Mellen,

PO Box 484, Intervale, NH 03845.

Lawrence Markey

June 21, 1993.

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, Washington, DC 20530

Dear Sir: I am writing regarding the Justice Department's decision to require the LOB holdings to sell the Cranmore Ski areas in North Conway, NH particularly. The past year of ownership, LOB has not only turned around the flagging ski area but has done a great deal for the Mount Washington Valley area. To require the sale of this area by a courageous true entrepreneur would be disastrous for the community. He has plans far beyond the ski area that can only benefit this area. Reading about this action I have noted that currently LOB owns a mere 25% of the Northeast ski industry and 6% of the national ski industry. This hardly constitutes a monopoly.

I desperately ask that you reconsider the demanded sale of Mount Cranmore ski area. I am a skier and resident of the Mount Washington Valley area and fully support what LBO has planned for this area.

Please Reconsider and Reverse Your Decision.

Lawrence Markey

ccs: Rep. Bill Zeliff
Sen. Judd Gregg
Sen. Robert Smith

Gary P. Farmer

June 21, 1996.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Washington, DC 20530.

Dear Mr. Conrath: I am writing to ask your assistance in reversing the senseless bureaucratic decision by the U.S. Department of Justice forcing the divestiture of Cranmore Mountain by LBO Enterprises.

As a neighbor to Cranmore and long time skier of New Hampshire mountains including others owned or to be owned by LBO, I do not believe the Antitrust Division understands the status of the ski industry in New Hampshire nor the decline of Cranmore Mountain until it was purchased by LBO this past ski season.

I do appreciate the mission of the Antitrust Division and its role in maintaining completion and protecting the consumer, but this is a case where allowing the consolidation to proceed will do just that.

I say this because economies of scale in the ski industry are necessary to reduce overall operating costs in an industry where skyrocketing ticket prices in recent years have forced many families to give up this recreational opportunity.

Cranmore is unique. It's place in history has been documented but it's importance to the local economy is less well known. As a local businessman in North Conway, I can assure you that the decline of Cranmore had a significant impact on State tax revenues and local incomes. This past year, with the substantial investments made by LBO in Cranmore, this situation has turned around. The business community showed their enthusiasm for and confidence in LBO by planning additional economic expansion. This has been destroyed by the Justice Department's proposed consent order.

I do not believe the Antitrust Division understands that New Hampshire ski areas compete regionally within the state namely the Sunapee, Franconia and Mt. Washington Valley regions. Geographic distances and natural obstructions define these regions. Therefore skiers choose a region first then a ski area within that region. If Justice understood this, then they would know that the number of areas owned by American Ski Company (LBO) only affects the economies of scale and marketability of the areas, it does not diminish competition. The exception would be owning multiple areas within the same region. This does occur since Attitash and Crandmore are within Mt Washington Valley.

However, LBO owned both there areas one season prior to the merger and all areas within the region flourished. Wildcat Mountain reported a 30% increase in skier visits, Black Mountain successfully emerged from bankruptcy and for the first time in a long time, all areas in the region were profitable. The reason is that LBO has breathed new life with the region because of their investments in, marketing of, and commitment to the Valley. These areas do not compete on price. Each has established its own niche based on terrain, amenities, teaching techniques and size. Each has successfully marketed itself by aiming at its niche demographics.

The bottom line is that the Department of Justice does not understand the ski business in New Hampshire and I am asking that you review the Consent Order and avoid making a mistake which will have an adverse affect on the consumer and the general economy of the region.

Thank you for your consideration. If you would like to discuss this further please feel free to contact me at the above address.

Very truly yours,

Gary P. Farmer

cc: Congressman Bill Zeliff
Senator Judd Gregg
Senator Bob Smith

Mrs. Bradford Lewis Boynton

June 21, 1996.

Craig W. Conrath,
Chief of Merger Task Force, Anti-Trust Div., US D.O.J., 1401 H St N.W., Washington DC 20530.

Dear Mr. Conrath: We were horrified to read our local papers that the Justice Dept. is forcing L.B.O. to sell Cranmore Mt., a ski resort in our village of No. Conway, so they have demanded that to our several if not many Ski Resorts or Areas is a monopoly. Ski business is not AT&T or any other large enterprize. It is a highly expensive recreational operation of making, snow trails and skiers, and getting people to use your mountain. It does not depend upon a monopoly of areas but on incredible know-how. In the case of Cranmore Mt., never has it been such excellent skiing as this year under LBO and the little town of North Conway would be a winter ghost town without Les Otten. He is a skier. He knows the ski area business. Please, please rescind this foolish order of having to sell out. We have skied at Cranmore since it opened in 1939 and we know how badly off Cranmore Mt. got before Les Otten put his know how to this area.

Sincerely,

Carol J. Boynton

Bradford L. Boynton

Bill Glenn

Craig W. Conrath,
Chief of Merger Task Force, AntiTrust Division, US DOJ, 1401 H Street, NW., Washington, DC 20530.

Re: Justice v. LBO Enterprises

Dear Mr. Conrath: It does not help competitiveness in the skiing industry to force LBO to give up their two weakest properties. Sunday River and Killington would be far better choices. LBO should be required to keep Cranmore for ten years.

There is a philosophy that says if one is going to be inspected, provide something pleasant for the inspector to find so he will not discover an unpleasant something else. Using this philosophy, LBO could have acquired Cranmore just to have something to give up to the Justice Department.

Sincerely yours,

Bill Glenn

Herbert H. Whittemore

June 21, 1996.

The Honorable Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, Northwest, Washington, D.C. 20530.

Dear Mr. Conrath: I am writing to object in the strongest possible way to your decision requiring Mr. Leslie B. Otten's LBO Enterprises to divest Cranmore Mountain Ski Area in North Conway, N.H., and Waterville Valley Ski Area in Waterville Valley, N.H., in order to merge with SKI Limited.

I disagree with your apparent premise that Mr. Otten, by owning three ski areas in New Hampshire, could monopolize ski ticket prices or packages, harming skiers or competing ski areas.

I know you and your staff are concerned with the common good of all parties: The skiers of New England, other ski areas, as well as Mr. Otten and his employees. And I thank you for that!

But I contend that allowing Mr. Otten to retain control of Cranmore and Waterville is crucial to skiers, to the economy of the Mount Washington Valley, Conway, N.H., and Waterville, N.H.

As you may know, Cranmore was in bankruptcy or losing money for the better part of a decade before Mr. Otten took over and turned the area around with a huge investment in lift, snowmaking and other equipment. Thanks to him, the mountain is recovering, skiers had a great year, and valley communities benefited greatly. I must point out that Cranmore is an economic linchpin and recreational jewel in Conway, N.H.

Mr. Otten rescued Cranmore, as he did Attitash Ski Area in neighboring Bartlett, N.H. I believe that Mr. Otten is good for skiing—no, make that great for skiing and for skiers!

That conclusion is based on 41 years of skiing; I first strapped on skis in 1954 at Cranmore and I've been going downhill ever since. I am a retired newspaper editor and wrote twice-weekly winter ski columns for the Lawrence (Mass.) Eagle-Tribune for 17 years.

I recall interviewing Mr. Otten in 1980 for a column when he bought and began developing Sunday River Ski Area in Maine. Then, it was a minuscule area. Today, it is simply the best; a jewel in the Maine economy; a wonderful playground for skiers.

In that 1980 interview, Mr. Otten laid out a projection of what he hoped to do with Sunday River. I went away from that interview trying to keep my objectivity intact, but torn between wondering whether Mr. Otten was a ski visionary or just spouting pipe dreams.

Well, let me tell you that those plans for Sunday River have all come true, and much, much more!

Quite simply, I believe Mr. Otten is the most exciting and best thing that I have witnessed in my 41 years of skiing.

It would be a sad and harmful thing, indeed, to deny Cranmore and Waterville their opportunity to be part of Mr. Otten's dynamic plans for skiing. And it will most certainly harm the economies of their communities and the many employees of the two areas because, without Mr. Otten, they are likely to slide back into bankruptcy.

It has been my observation that Mr. Otten's way of doing business is NOT financially harmful to the price of lift tickets. His way of doing business is simply better than that of other areas. He makes lots of snow, keeps making it to improve conditions, runs his areas with great care and concern.

Skiing, by its very nature, is an expensive sport. A skier's personal equipment is costly. A well-equipped skier can be wearing anywhere from $1,000 to $3,000 in gear. So, too, are lodging, meals, and transportation. The point I am trying to make is that the price of a lift ticket is a relatively small part of the individual skier's cost.

It is doubtful, in my mind, that, with three ski areas in New Hampshire, Mr. Otten could monopolize the ski industry in the Granite State. In fact, I believe that by depriving him of the right to run Cranmore and Waterville, you will be hurting the economy of New Hampshire (where tourism is the Number 2 industry). You will be hurting skiers, because, clearly, no one provides better skiing conditions than Mr. Otten.

That is one skier's view of the situation. I hope that by sharing it with you, you may reconsider your earlier action and change your position regarding divestiture. I thank you for your patience in considering these remarks.

I should say that I have no connection with LBO Enterprises or SKI Limited. I am simply a retired newsman living in the Mount Washington Valley and loving the skiing at Attitash Bear Peak Cranmore and Sunday River. And I am thankful for brilliant men like Mr. Otten and Mr. Phil Gravink, the masterful CEO of Attitash Bear Peak Cranmore. And that is why I write.

Sincerely,

Herbert H. Whittemore,

P.O. Box 204, Intervale, N.H. 03845.

The Bumsted Agency

June 21, 1996.

Mr. Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street NW., Washington, DC 20530.

Re: Mount Cranmore Ski Area, North Conway, NH 03860.

Dear Mr. Conrath: I was very upset to hear that the Justice Department was requiring LOB Enterprises to divest itself of Cranmore and Waterville Valley.

As a resident of Kearsarge (a suburb of North Conway) I am primarily concerned with Mount Cranmore. This mountain has been through a great deal since I moved here in 1973. When Les Otten purchased it and started to pour money into it, it seemed that at last its troubles were over.

It makes little sense to me to prohibit LBO from owning Cranmore because of the possibility of lack of competition. We have a number of other ski areas in the Valley should Mr. Otten elect to make his prices non-competitive. Wildcat, Black Mountain, and King Pine all offer a variety of skiing for all abilities.

Although I can see the need for monitoring corporations which supply goods to the public to keep competition alive, I feel that, in this case, which covers a recreational situation, the Justice Department has overstepped its bounds.

Sincerely yours,

Bartram W. Bumsted

Country Cabinets, etc.

June 21, 1996.

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street NW., Washington, DC 20530.

Dear Mr. Conrath: The forced divestiture of LBO's ownership of Mt. Cranmore and Waterville Valley as a condition required by the DOJ for it to allow the merger of LBO Enterprises and S–K–I Ltd. has the potential of having a very negative impact on our town and its business climate.

The analysis of the situation seems to be flawed in the assumption that LBO would have a monopoly thus eliminating a competitive environment for the consumer. LBO knows, however, that it is dealing with a savvy consumer and that charges can be only what the market will bear. Although LBO currently owns Attitash/Bear Peak/Cranmore, the daily ski rates are different at each mountain. Each area has different amenities that dictate charges accordingly. There are also other mountains in the immediate area which offer alternatives of price as well as types of skiing and snowboarding experiences.

Being business owners in North Conway and members of many organizations including the Mount Washington Valley Chamber of Commerce, we can attest to the fact that LBO is very community minded and has added greatly to the marketing of our ''Valley''. We know that LBO is strong and that Cranmore will continue to thrive under its involvement. Cranmore is a ski area that had no investment for years and was deteriorating. Finally, along came LBO willing to work hard and put money into making it a first-rate ski area! To have another entity take over such an important facet in our town is risky. We know and like what we currently have!

Lastly, we are very concerned about local jobs being affected by this change. Our economy is mainly dependent upon tourism and LBO's ability to market our area as a whole will certainly be diminished with it's loss of Cranmore's income. Our Chamber has suffered over the past 8 years due to a poor economic climate. LBO's marketing efforts and support of the Chamber's marketing programs has been much appreciated.

Please reconsider and reverse your requirement that LBO must sell Mount Cranmore. Thank you for your consideration.

Sincerely,

Richard and Joy Check

Senator Bob Smith, Senator Judd Gregg, Congressman Charlie Bass, Congressman Bill Zeliff.

John E. Hogan

June 22, 1996.

Craig W. Conrath,

Chief Merger Task Force, U.S. Dept of Justice, Washington, D.C.

Dear Mr. Conrath: I am writing re the recent decision re the merger of LBO Enterprises & Ski LTD that they must sell off Cranmore Ski Area in North Conway. This decision made, I'm sure, because they also own Attitash/Bear Peak which is also in Mt. Washington Valley area.

I'm just hoping that you will give this a bit more consideration and possibly allow them to retain this property along with Attitash/Bear Peak. Just a bit of history. Cranmore was the first ski area in Mt. Washington Valley, it is located right in the center of town; it is rather historic, especially to skiers, in that it had the first & only Skimobile to get skiers to the top; it brought Hannes Schnieder over from Austria to escape the Jewish situation ad he started one of the first ski schools in U.S. introducing his new method of teaching skiing. I sort of refer to it as the Lily of the Valley when it comes to skiing.

Unfortunately in the past 10 or 12 years (or more) it was not being cared for and was running down rather badly. It finally wound up in the banks hands and they were doing nothing other than trying to run it until they found a buyer. Within a year of buying Attitash/Bear Peak Les Otten took over Cranmore and immediately started pouring money into putting in a great new lift, much work on trails, lodge building and snowmaking and making it once again a focal point in the Valley.

He now runs two great areas in the Valley and has been benefit to the Valley. There is another major ski area about 20 miles from North Conway known as Wildcat. I understand your concern re competition & pricing but this is a perfect example that he is not out to destroy anyone. Because of the extensive advertising that LBO Enterprises does Wildcat benefited, as did the Valley as a whole, so much so that Wildcats receipts were up almost 30% this past season. (It helped that because of the competition they were also forced to finally do some upgrading to their area!) Les Otten, it seems does not compete by price, but rather feels it more important to give value for what he charges.

Wildcat's prices are lower, especially weekdays & Sundays and they have 2 for 1 specials on Wednesdays. Les Otten has never tried to compete with that it seems. He just seems (I do not know the man nor have I seen him) to try to be fair. I have a lifetime pass at Attitash and when he took over, there was some concern that they would continue to be honored. It turned to be not a problem at all and we were even extended the right to also ski Cranmore on our pass, something he definitely did not have to do.

I'm just afraid that if he is forced to sell Cranmore that it will once again go into a nose-dive and may wind up closing. That would be a terrible, terrible loss to the Valley and, from my viewpoint, an historic loss.

I just don't believe that owning the two areas here puts him in an extraordinary competitive position. This is just a case where LBO Enterprises is truly good for Mt. Washington Valley and GREAT for Cranmore.

I for one hope that you will reconsider your position on this matter. Thank you for your time in reading this letter.

Sincerely,

John E. Hogan,

PO Box 488, Intervale, NH 03845.

Lawrence Fouraker

June 22, 1996.

Mr. Craig W. Conrath

Chief, Merger Task Force, Antitrust Division, US Department of Justice, 1401 H Street NW., Washington DC 20530.

Dear Mr. Conrath: We are presently full-year residents of the Mount Washington Valley, New Hampshire. (Next year we will be weekend visitors, as I will join the faculty at Wellesley College.) I am writing to protest the foolish and incomprehensible antitrust ruling against Mr. Les Otten of LBO Enterprises. Last winter we had season passes that were valid at both Mr. Cranmore and Mt. Attitash/Bear Peak. Far from being anti-competitive, it is a great boon to both areas to have interchangeable tickets.

We are also far from sanguine that another owner will prove able to continue Les Otten's *multimillion dollar investment program* that turned Cranmore from a run-down, struggling area threatened several times with bankruptcy into an exciting fairly-centered tourist draw for the businesses in the area. Wildcat is a potential buyer, but they have hardly maintained equipment and facilities there, and I don't see how they can do so at Cranmore. Thus, your decision may well push a recovering ski area right in the middle of our community back into financial trouble and possible bankruptcy. That would certainly not stimulate competition. I have studied economics at the graduate level and am well aware of the benefits of a competitive marketplace. The airline industry and the telecommunications field are two clear examples where consumers—and the U.S. economy—have benefitted from the actions of your colleagues. But alpine skiing in New England is clearly not such a case. The many happy customers of Mr. Otten—and, surprisingly enough, every single employee I have spoken with—implore you to reverse this stupid ruling.

Lawrence Fouraker, Ph.D,

P.O. Box 726, Intervale, NH 03845.

Thomas L. & Grace N. O'Connor

June 23, 1996.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, US Department of Justice, 1401 H. Street NW., Washington, DC 20530.

Dear Sir: We are asking the Department of Justice to reconsider its recent decision in the matter of the merger LBO Industries and SKI Ltd. that requires LBO Enterprises to divest from its holdings The Cranmore Mountain Ski Area. We feel this would have a negative impact on the quality of skiing available in the Mount Washington Valley as well as on the local economy.

Within an approximate 40 mile radius of North Conway, where Mount Cranmore is situated, there are seven ski areas, only two which would be owned by LBO Enterprises. This is surely a very competitive market.

In the year of ownership under LBO Enterprises, the skiing improved dramatically and has never been better in the previous 25 years we have skied the mountain. Without the financial backing available to a large and successful operator in the ski business we feel the viability of Cranmore is in jeopardy. Further improvements planned by LBO will not be forthcoming, the business will fail and competition will be reduced.

Sincerely yours,

Thomas L. O'Connor

Grace N. O'Connor

cc: Representative William Zeliff,
Senator Robert Smith,
Senator Judd Gregg.

Arthur J. Brissman and Barbara A. Brissman

June 23, 1996.

Craig W. Contrath,
Chief, Merger Task Force, Antitrust Division, US Department of Justice, 1401 H. Street NW., Washington, DC 20530.

Dear Chief Conrath: The 1995–1996 Ski season at Cranmore Mountain, No. Conway, New Hampshire was the very best skiing we have had for a long long time.

The upkeep and economic worth of Mt. Cranmore had been on a serious decline for the past several years and now, finally, in 1995, LBO, Les Otten, purchased the mountain and put money into it. Even though he has been involved for only a year now, we, the community, have already seen the value of commitment from somebody willing to make Mt. Cranmore and the Mt. Washington Valley a first-rate ski area.

Needless to say, we are devastated to learn that Mr. Otten has been instructed to divest Mt. Cranmore in order to acquire SKI Limited. We, among many, believe this would be a serious mistake and are concerned about Cranmore's future if LBO is forced to sell the mountain.

It is our most urgent request that you reconsider and reevaluate your directive that LBO must sell Cranmore Mountain.

The merchants, innkeepers, and all of us dedicated skiers believe the future growth and return of a strong economy in this area depend on your revised decision to allow LBO to continue with his plans and improvements in the Mt. Washington Valley.

This letter is respectfully submitted and thank you for your attention to this matter.

Very truly yours,

Arthur J. Brissman

Barbara A. Brissman

Harold C. Fisher

June 23, 1996.

Re: Cranmore Mtn.—LBO Holdings

Dear Mr. Conrath: I am writing you in regard to your decision to force LBO Holdings to sell Cranmore Mtn. because of the potential for price fixing. While I can understand this possibility to some extent, I think you should consider more carefully the ''big picture''.

Cranmore has always been a good ski area because of its location near the center of town. The previous owners weren't able or willing to invest sufficient capital in the mountain to make it a profitable enterprise. Because of the limited size of the mountain, I think it requires a tie-in with another ski area in order to make it viable. LBO did this. They installed a new high speed chair lift and made the tickets interchangeable with Attitash, just 20 minutes away. As a result, business boomed last year and the valley benefited greatly. The point I want to make is that whatever risk may be involved with price fixing, I believe is overshadowed by the benefits to the town and valley by having Cranmore a successful ski area.

Wildcat Mtn. is an excellent ski area, only about 40 minutes from Cranmore. King Pine and Black Mtn. are smaller ski areas nearby. Competition from these mountains should help to keep prices in line.* LBO is doing a first class job in promoting skiing in our area and the economic benefits are widespread. Before you definitely decide to force the sale, I hope you will give full consideration to the impact on our local economy.

Sincerely,

Harold C. Fisher.

*P.S. I forgot to mention Bretton Woods and Shawnee Peak are ½ hour from Cranmore.

The letter from Professor Stephen F. Ross was withdrawn by commentor.

The letter from Bruce, Patricia and Carolyn Todd was not able to be reprinted in the Federal Register, however, it may be inspected in Suite 215, U.S. Department of Justice, Legal Procedures Unit, 325 7th St., N.W., Washington, D.C. at (202) 514–2481 and at the Office of the Clerk of the United States Court for the District of Columbia.

Town of Conway

June 24, 1996.

Craig W. Conrath,
Chief, Merger Task Force, Anti-Trust Division, U.S. Department of Justice, 1401 H Street NW., Washington, DC 20530.

Re: LBO/SKI Ltd Merger; Cranmore divestiture.

Dear Craig: This letter is in reference to the forced divestiture of Cranmore from LBO/SKI Ltd, to be known as the American Ski Company, by the U.S. Justice Department. The Justice Department's requirement that LBO/SKI Ltd sell Cranmore as part of the merger of the two companies will cause a tremendous decline in the alpine ski industry and in the local and regional economies of Conway and the Mount Washington Valley.

As the Planning & Economic Development Director for the Town of Conway, I can assure you that last years' purchase of Cranmore by LBO was met with extreme enthusiasm by the Town of Conway as well as the towns surrounding Conway. Understand that Cranmore is a very small, family oriented ski resort; the likelihood of it succeeding as a stand-alone resort would be slim at best. To date, LBO has invested in excess of four million dollars into Cranmore, and had plans for further expansion of both the skiing and resort amenities. This past years' success at Cranmore was only made possible by the ownership of the resort by LBO. Simply put, LBO has the means and the experience to make Cranmore succeed.

Regarding the Justice Department's concern about the increase in ticket prices as a result of the merger, the answer to the question is very complicated. The merger of LBO/SKI may, in fact, cause a reduction in ticket prices, as there is certainly an economy of scale created by owning several mountains. Additionally, ticket prices alone may not be a true reflection of what consumers are getting for their money; for instance, LBO's vast expansion of Attitash provided a great many additional skiing opportunities while ticket prices rose only slightly. Lastly regarding unwarranted price increases; alpine skiing has been, and may always be an expensive form of winter recreation. If the merger of LBO/SKI results in a significant ticket price increase, a great number of skiers will be priced out of the market, an already small market, which will result in a decrease in company revenues. LBO has, and I believe will continue to attract new participants to the sport by providing a great product at prices which are competitive with other resorts, and which are competitive with other winter recreation opportunities.

Please reconsider your decision to force the sale of Cranmore, it will devastate Conway's economy.

Thank you in advance for your time and consideration on this very important matter.

Yours sincerely,

John D. Krebs,

Planning & Economic Development Director.

Richard J. Fraser

Craig W. Conrath,
Chief, Merger Task Force, Anti-trust Division, U.S. Dept. of Justice, 1401 H Street N.W., Washington, D.C. 20530.

Dear Mr. Conrath: With regard to the merger of S–K–I Ltd. with LBO Enterprises (American Skiing Corp.) I wish to register my objection to the Justice Dept. requirement for divestiture of the Waterville Valley and Cranmore ski areas as a condition for approval. My objection is based on the following facts:

a. Both of these areas are most needful of major facility upgrades, having recently gone through bankruptcy proceedings and ownership changes. Each will be left to fend for themselves in a market that demands large capital investments, solely the domain of such large corporations as American Skiing, Interwest, ect.

b. The above named divestitures (especially Waterville Valley) have slipped greatly in their total skier visits in the 1995–96 season, in spite of an excellent snow year, compared to other areas due to the lack of upgraded facilities. It follows therefore, that if major capital infusion is not forthcoming to improve the skiing experience for the day/weekend skier, that the intent of the ruling will be moot, with these areas not able to provide either an affordable, or more important, quality skiing which is vital to this high risk sport.

c. Beyond the affordable skiing factor involved in the ruling is the economy of the surrounding communities, still struggling with the real estate/economic downturn that has hit these two regions hard. Forcing yet another change of owners will only delay needed improvements, further eroding their attractiveness to these very skiers that the Justice Dept. is trying to protect.

In light of these subjects, I maintain that this decision will have just the opposite intended effects of providing skiers with competitive rates. In the ski business, it is not just cost that drives, but the quality experienced is every bit as important, as most skiers would testify. A lower cost area with sub-standard facilities would be a bad trade off with the likelihood of not having the skier return, only to have the same person travel to the higher ticket price area next time seeking superior facilities.

I ask that the Justice Dept. reconsider this ruling. New England has lost numerous smaller affordable areas for the above reasons. Please do not let these areas go the way of their predecessors.

Richard J. Fraser,

3 Applewood Lane, Franklin, Ma. 02038.

Stanley P. Wilson

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Dept of Justice, 1401 H Street NW., Washington, DC, 20530.

Re: Consent Decree.

Dear sir: Please *do not* force LBO to divest Cranmore Mountain or Waterville Valley. At first, we too were doubtful of LBO's intentions, and we were unsure of our town's future. However, in one year, and with a huge investment, Cranmore showed a profit, summer use is returning, and most importantly to us, local business is booming.

The nature of the skiing business in the years ahead is about to be defined by LBO, and, quite frankly I don't know what that definition is, but it involves maximum use of our stores, our lodging, our dining facilities. In short it brings business to us and no one can do it as well as LBO.

Sincerely,

Stanley P. Wilson,

Box 328, Intervale, NH 03845.

Conway Seat Cover Company

June 25, 1996.

Mr. Craig W. Conrath,

Chief, Merger Task Force, U.S. Department of Justice.

Dear Mr. Conrath: I'm writing in response to the possible forced sale of Waterville Valley and Cranmore Mt.

The idea that the retention of these area's by LBO Enterprises would contribute to the monopolizying of the ski & snowboard markets in these two area's is a real stretch.

Firstly, I would like to point out, as I'm sure others have, that both of these areas are located quite near, by skier standards, to many other area's.

Cranmore has Blade Mt., Shawnee Peak King Pine & Wildcat all within a half hour drive.

Waterville has Gunstock, Cannon Mt., Loon (which is a huge operation) and many areas to the south which have to be passed by our southern N.E. Friends before that reach us.

Along with my full time business, which does not cater to the tourist directly, I am a part time ski instructor working at Attitash for LBO. I'm a member of the Professional Ski Instructors of America and have been skiing in this Valley for almost 40 years.

I have been around to see many changes, most not good as the skiing industry in this area has seen little growth and has been going slowly downhill for years, (no pun intended).

In the short time LBO has been involved things have turned around dramatically.

Will the cost of skiing go up? Probably but only in relations to improvements.

Can he control pricing? I doubt it. The average skier can only go so far in paying for this sport and he or she are about there. The price controls in this sense are built in.

Give the business man in this area a break and leave things alone. We need this company, he is successful and success breeds success.

As I mentioned I don't deal directly with the tourists, but my business reflects on the Success of this town.

I teach skiing because its fun and I enjoy it. With LBO I think it can only get better.

Thanks for your time.

Sincerely yours,

Joseph C. Webb

Dan Robinson

June 25, 1996.

Craig W. Conrath,

Chief of Merger Task Force, Antitrust Division, US Dept. of Justice, 1401 H Street, NW., Washington, DC 20530.

Dear Craig: I oppose the ATD's recommendation that Cranmere Mtn. and Waterville Valley be sold off to the recent LBO purchase of Ski Ltd. The truth is Lbo Enterprises delivers a better ski package than Cranmere [of] Waterville could ever hope to do on [there] own. I know—I've skied most of my 43 years and have had numerous seasons passes. Waterville with Tommy Cochran at the helm for 29 years just plain wasn't keeping up—LBO Enterprise is the perfect outfit to run Waterville and could deliver world class skiing that we skiers deserve! Prices are basically the same at most ski areas—all things considered, besides were talking descretionary dollars. Terrain & location dictate who your customers will be in the Ski World more than ticket prices and ownership. I've skied Cranmore all my life and since LBO took over skiing there has *never* been better. Please reconsider your actions—as skiers, we would be getting an *Anti Trust Shafting* just when things *finally* were looking up. I can't tell you how [unbelievably] *frustrating* It has been to be a ski fanatic and live in New England. From bad snow years to poor or slow capital improvements—It's always been something. LOB in the past 6 years or so has raised the bar that most major ski areas have to clear to stay competitive. The length to consumers has been a *dramatic* improvement in Ski conditions at all competing areas. LBO has been very, very good to us and for New England skiing. No matter what you—Craig ultimately decide to do I'm going to invest my skiing dollar in LBO as they deliver *By far* the best skiing in New England. Let them expand this marvelous operation unhindered so others can experience LBO Skiing—skiing the way it should be.

Thank you,

Dan Robinson,

525 Ocean House Rd., Cape Elizabeth, ME 04107 and Bethlehem NH, winter.

If you wish to discuss this matter with a real skier I can be reached at 207–799–4729.

Peter B. Ward

June 25, 1996.

Craig W. Conrath,

Chief of Merger Task Force, Antitrust Division, US DOJ, 1401 H Street, NW., Washington. DC 20530.

Dear Mr. Conrath: Please don't let the brevity of this note belittle the very strong opposition I'm extending to you regarding the Department of Justice's recent divestiture ruling on LBO's forced sale of Mt. Cranmore in North Conway, New Hampshire. As you may be aware, Mt. Cranmore is the ''Mecca'' of skiing in this country, and over the years it has experienced good and bad times. With the arrival of Les Otten on the scene, this wonderful ski area finally has the opportunity to become a profitable operation, serving its community of faithful patrons in the manner originally intended by Harvey Gibson and Hannes Schneider.

Please do everything possible to reverse this absurd ruling so that Mt. Cranmore may continue to thrive under strong and knowledgeable leadership. Washington Valley needs this attraction, and people such as myself, who have skied Mt. Cranmore since the late '30s, welcome Les Otten and his expertise!!!

Please be thoughtful enough to respond to this plea.

Respectfully,

Peter B. Ward,

60 Bridge Street, Manchester, MA 01944.

Dick Smith, Photography

June 25, 1996.

Mr. Craig W. Conrath,

Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street NW., Washington, DC 20530.

Dear Mr. Conrath: I am sure that it was with good intent that the Department of Justice's decision to require LBO to divest itself of Waterville Valley Ski Area and Mt. Cranmore. I can only speak for Cranmore as I live in North Conway.

Cranmore Mt. has gone through at least two owners and has been on the verge of bankruptcy for 10 or more years. It was with great relief and expectation to the residents and businesses when it was announced that LBO was buying Cranmore. The ski industry is not noted as a particularly profitable business and a bad winter in one area can be devastating. Thus owning ski areas in different parts of New England can spread the profits and losses of a particular area. It is unlikely that the owner of one area has the resources to withstand two or three bad winters. A new owner of Cranmore is unlikely to have the resources to carry Cranmore through the bad years and will be back in bankruptcy again dragging the local economy down with it.

While competition is a noble principle, lowering ticket prices can only hurt the bottom line and put Cranmore on the brink of bankruptcy again.

I am afraid that your decision was too narrow and the overall view of the local economy was not taken into consideration. I urge you to reconsider your decision and allow LBO to retain Mt. Cranmore.

Thank You.

Sincerely,

Dick Smith,

P.O. Box 300, Crestwood Drive, North Conway, New Hampshire 03860.

Robert L. Johnson, CPA & Associate

June 25, 1996.

Craig W. Conrath,

Chief of Merger Task Force, Antitrust Division, US Department of Justice, 1401 H Street NW., Washington, DC 20530.

Re: LBO Enterprises' requirement to divest itself of Cranmore & Waterville Valley

Dear Mr. Conrath: As I understand from the local papers, the Justice Department is forcing LBO to divest itself of Cranmore and Waterville Valley. I will outline several points why LBO should be allowed to retain the above areas.

Will divestiture increase competition—I doubt it.

Both Cranmore and Waterville Valley have suffered through under-capitalization and bankruptcies prior to purchase by LBO.

There is no reason to assume that future small mountain operators will be able to withstand the capital needs to run free-standing areas. Economies of scale that LBO has available include substantial buying power when negotiating for the purchase of fixed assets (i.e, lifts, supplies, electricity, etc.). LBO has an excellent track record of investing substantial sums in areas that they have purchased. LBO puts its money where its mouth is.

The consent decree assumes that Cranmore and Waterville Valley can survive on their own. I have no doubt, based on prior histories of both ski areas, that the opposite is likely to be true. Without the buying power and capital of a larger organization, both areas are likely to return to their prior bankrupt ways. If both areas return to bankruptcy, then the Justice Department has not solved their perceived competition problem, but only limited consumers' ability to choose where to ski.

Economic disruption for the communities dependent on Cranmore & Waterville Valley.

Under the assumption that Cranmore and Waterville Valley could not survive without LBO, then the local communities will suffer accordingly. The Federal Government spends hundreds of thousands of dollars a year in our rural areas to promote the economy. The divestiture decision seems short-sighted. Again, LBO has a proven track record of investing in the ski areas with a positive fallout within the local community.

Even if these small areas survive, they are likely to ''limp along'' with no competition impact to the industry.

This merger will provide substantial cost savings and allow for survival or Cranmore and Waterville Valley.

Enclosed please find an article from the Wall Street Journal entitled FTC to Weight Cost-Savings In Mergers, dated June 3, 1996. Briefly, the article says that some mergers deemed illegal today could be approved in the future with an appropriate study of the cost savings involved in ''production, distribution, promotion and other efficiencies * * * '' LBO has the ability to pool promotion, capital expenditures, etc. to provide high quality skiing that would otherwise not be available to small ski areas.

Sad to say, but Cranmore and Waterville Valley's bankrupt past are proof positive that small areas are not economical to run.

If the Justice Department can find a better ski alliance for Cranmore & Waterville Valley than LBO, I would like to see it.

Conclusion.

The industry is consolidating for the good and this consolidation will provide stability for both skiers and the surrounding communities which depend on Cranmore and Waterville Valley.

I respectfully request that the Justice Department reconsider its order for divestiture of Cranmore and Waterville Valley.

Very truly yours,

Robert L. Johnson, CPA/PFS,

Personal Financial Specialist.

enc. WST article 6/3/96—FTC Weigh Cost-Savings In Mergers.

cc: Senators Bob Smith & Judd Gregg, Congressmen Charles Bass & Bill Zeliff.

The WST article of 6/3/96 was not able to be reprinted in the Federal Register, however, it may be inspected in Suite 215, U.S. Department of Justice, Legal Procedures Unit, 325 7th St., N.W., Washington, D.C. at (202) 514–2481 and at the Office of the Clerk of the United States Court for the District of Columbia.

Crest

June 25, 1996

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street NW., Washington 20530.

Dear Mr. Conrath: I write this letter as a small businessman in a small resort town who was deeply disappointed in the decision that Cranmore Mountain must be divested from LBO Enterprises.

Having been in North Conway, New Hampshire for over 20 years, I've seen the gas lines, 21% interest rates, no snow, and the recession of the 90's. Through all these times, the question of whether Cranmore would continue to exist was always present on everyone's mind. For most of these years it was open, but not ready or financially capable of attracting tourists to our area. After twenty years, I thought we finally had some stability to our economic base with the purchase of Cranmore by LBO Enterprises.

With the large capital investments that need to be made to operate a successful ski area and the marketing acumen to attract customers to the resort, there are few who can make this a successful venture. You may feel that there are other buyers who can offer the same, but in fact 20 years of experience indicates otherwise. While your concern is preserving competition and making sure that prices are competitive, you may in fact be doing just the opposite. It is unlikely that anyone buying Cranmore would have the purchasing power or management available. Consequently, the cost of doing business for someone new coming in would be higher than for LBO. Higher costs of doing business mean higher prices. No interchangeability of tickets or choices means fewer visitors, after all, there are other ski resorts or areas to visit that do offer this. Furthermore, even with LBO owning two ski areas in the Mt. Washington Valley there are still three other areas with three different owners. Five ski areas with four owners does not seem to have a monopoly over five areas with five owners.

I understand that your concern is with the skiers of Massachusetts and there are still many choices for skiing available to them in other non LBO ski areas. I wish the Department of Justice was as concerned with the residents of the Conways/Mt. Washington Valley in the 70's, 80's, and 90's when we had gas shortages and bank foreclosures as they are now about the skiers from Massachusetts. The skiers will always have choices; we didn't when we faced gas lines, recessions, and bank foreclosures. We had an increase in skier visits last year because of the investment and value that skiers saw in our area due, in part, to LBO Enterprises. We have started to see some economic revival in our area. Please let the free enterprise system work.

I respectfully request that your allow LBO Enterprises to continue its ownership and operation of Cranmore Mountain for the benefit of skiers, its employees, the residents of the Mt. Washington Valley, and for the State of New Hampshire.

Sincerely,

Robert M. Weiss,

Dealer Principal.

Robert McManus

P.O. Box 516, Jackson, N.H. 03846.

June 25, 1996.

Mr. Craig W. Conrath,

Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street NW., Washington, DC 20530.

Dear Mr. Conrath: My comments are directed to your recent position regarding the ownership of Mt. Cranmore in North Conway, NH.

My wife and I are retired innkeepers and for many years we were involved on a daily basis with the tourist related economy of the area that we call the Mount Washington Valley. With its geographic location, Mt. Cranmore is critical to the economy of the area.

When Mt. Cranmore went bankrupt a few years ago, the effect on the area was dramatic. It was more than a loss of jobs and a drop in the number of dollars in circulation. There was a deterioration of the physical plant and the collective psyche.

The acquisition of the complex by LBO was even more dramatic. The jobs came back. The economy took a boost. The region found a sense of hope for the future. There was a substantial capital investment and a level of management expertise beyond the grasp of the usual ski area. I must add that Cranmore is much more than a ski area. It is a delightful summer tourist attraction. There are world class clay tennis courts and the only indoor courts within 60 miles. There is a health club with constant use by all age groups in the community.

Your proposal to require LBO to divest the Cranmore complex has shaken the community to the core. I urge you to make a greater effort to examine the economic and social impact of this decision on the region.

Sincerely,

Robert McManus,

Ann McManus.

June 26, 1996.

Harry Stead

Craig W. Conrath,

Chief Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street NW., Washington, DC 20530.

Dear Mr. Conrath: I am writing to you to strongly protest the Justice Department's ill founded ruling that is forcing LBO to divest itself of Mt. Cranmore. I particularly found your Mr. Biggio's response to the Conway Daily Sun interview (6/25/96 issue) to be a typical Federal Gov't heavy handed response. Like; ''I don't recall a circumstance when we have withdrawn'' stated Biggio. Since when have you people become infallible?

For Mr. Biggio to state that you entered into a settlement in concert with LBO was a joke you figuratively held a gun to his head. Here's another quote from Mr. Biggio. ''All this happened before the *trigger was pulled*'' and the assistant attorney general signed on to a hostile lawsuit. Sounds like a threat to me!

As far as the Justice Dept filing a Competitive Impact Statement detailing their rational and conclusions, I submit that the Department does not have people that are knowledgeable enough in the factors that are required to make an old small ski area with a southern exposure in Mt. Washington Valley a successful venture. For Mr. Biggio to say that his staff talked to a number of operators, industry officials, as well as skiers is like taking a poll; the results can be steered by the way the questions are phrased. Anyway other operators & industry officials shouldn't count, only skiers opinions count. So why didn't your Dept hire a professional poll to [simple] ask the skiers at Mt. Cranmore during the Winter of '95–'96 as to how they rated it that season as compared to any of the past 15 seasons as to skiing conditions, amenities, cost etc etc; and whether they felt that LBO ownership was good for the skiers of Eastern New England. Not even if it was good for the economics of the Valley.

If the Department's second concern is the economic impact on Mt. Washington Valley then splitting Cranmore off from it's sister Mountain, Attitash/Bear Peak will without a doubt have a negative economic impact.

All Mr. Biggio's talk about the Justice Dept closely evaluating every prospective buyer to assure that Cranmore is put in the hands of a strong operator isn't anything more than pure rhetoric. I submit that the Dept is completely incapable of such an evaluation of prospective buyers; and secondly with a 180 day time limit on LBO to sell, you'll sell to the first buyer that comes along with the financial backing that will consummate a sale.

I know that you have received many letters that have taken a very positive approach on why Cranmore needs to stay a part of the LBO family for it to survive; and I had planned to write such a letter until I read the interview of Mr. Biggio with his cavalier attitude.

It's a sad state of affairs when the Federal Gov't spends our tax money to meddle into an industry that is fueled by discretionary spending and isn't ______ has been self regulating in a free market environment? The two ski areas in the State that have the poorest reputation are Cranmore Mt. and Mt. Sustapel both owned and operated by the State of New Hampshire. If this State can't successfully operate ski areas, what makes the Federal Gov't think that they can regulate a ski area to economic success.

The Justice Dept should seriously consider all comments that it receives before and during the 60 day public comment period. Why ever have one if it's nothing more than a formality as indicated by Mr. Biggio when he states: ''I don't recall a circumstance when we have withdrawn publics faith in their gov't,'' if you truly considered the negative impact that forcing LBO to divest itself of Mt. Cranmore would have on Eastern New England Skiers.

Very truly yours,

Harry Stead,

Roberta M. Stead,

7 Glem Ellis Road, Glem, NH 03838–1268.

cc: Senator Judd Gregg, Representative William Zeliff.

Sandra W. Dahl

June 26, 1996.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street NW., Washington, DC 20530.

Dear Sir: I am writing to urge you drop the government's insistence that LBO Enterprises divest itself of the Mount Cranmore ski area. LBO has revitalized this area's oldest ski resort and enabled the town to retain an important tourist attraction; to require that this ski area be put up for sale again and therefore into the hands of a corporation or person(s) with potentially less business ability and/or commitment to regional growth and development is absolutely ludicrous.

My concern about this action is more deep-rooted than the potential damage to our local economy. My concern is that your agency has seen fit to restrict the growth of vital, dynamic organization which provides the general public a place to spend purely discretionary income. Skiing, alpine slides and water-play pools are not necessities of daily living; people are free to choose where and *if* they ski and there are any number of areas in Maine. New Hampshire and Vermont where one can choose to ski that are not owned by LBO. My concern is that the anti-trust laws or restrictions or whatever that type of thinking is called is being applied to a business involved in the provision of recreational activities to people who are free to choose when, if and where they participate in those activities. As for other providers of those elective activities, if they can do it better or at least as well, they will get the business.

I am asking that the Justice Department throw out the consent decree against LBO and allow private enterprise to continue to grow unimpeded by governmental interference.

Very truly yours,

Sandra W. Dahl,

P.O. Box 789, Glen, N.H. 03838.

c.c. Rep. Zeliff, Sen. Gregg, Sen. Robert Smith, LBO Enterprises.

Robert C. Peterson

June 26, 1996.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Dept. of Justice, 1401 H Street NW., Washington, D.C. 20530.

Dear Mr. Conrath: It was with great concern and much confusion that I recently read of your ruling against LBO Enterprises of Sunday River, Maine. My concern is over the financial impact on the town of North Conway, NH if LBO does not continue to operate the Mt. Cranmore Ski Area.

As you are probably aware, Mt. Cranmore has for some years now existed only at the pleasure of a series of private owners and a desperate bank. Under Mr. Otten's leadership last year, the facilities were improved, the staff expanded and the mountain's image considerably enhanced. For the first time in recent memory, the area ran profitably and the employees were paid on time. Mt. Cranmore is the most historic ski area in the U.S. Only as a member of a financially strong family can Cranmore continue to exist as one of the finest family ski areas in New England.

My confusion can be best expressed by: ''WHY''? This is not AT&T or Microsoft! So what if one company controls 75% of the northeastern ski market. That's only 6 to 7% of the national market. If lift ticket prices go too high, people won't come. The whole process is self correcting. LBO ticket prices are already higher than the competition and are worth every penny. These people know how to put snow down! Customer service at LBO areas is excellent. It seems the only one that's unhappy about the things that LBO is doing for skiing in New England is the Justice Department.

This whole issue just lends credence to the most feared words in the English language— ''I'm from the Government and I'm here to help you!''

Sincerely,

Robert C. Peterson,

Glen, NH 03838.

Richard & Lois Anthony

June 26, 1996.

Mr. Craig W. Conrath: We have been winter residents in North Conway, N.H. for about 30 years, and avid skiers at Mt Cranmore and Attitash.

We have been pleased with Les Otten's commitment to both ski areas and to the North Conway—Bartlett areas in general.

We do *not* believe the Dept. of Justice's divestiture ruling on LBO's forced sale of Cranmore is in the best interest of the economy of the area and the skiing industry.

Richard & Lois Anthony,

3 Concannon Rd., Kingston, N.H. 03848.

M.L. Regan

June 26, 1996.

Mr. Craig W. Conrath,

Merger Task Force, Antitrust Div., US. Dept of Justice, 1401 H St. Washington D.C. 20530.

Please reverse the decision re Mt. Cranmore in North Conway. LBO has helped the economy of this tourist valley & this antitrust is a blow to all.

Miriam Regan,

Box 345, Intervale, NH 03845.

Saint Anselm College

June 27, 1996.

Craig W. Conrath, Esquire,

Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Washington, DC 20530.

Dear Mr. Conrath: I am writing about the forced sale of Cranmore Mountain Ski Area in connection with the acquisition by LBO Holdings of Ski Limited.

We are very appreciative of the Antitrust Division of the Justice Department's protection of consumer interests in all mergers and acquisitions. We are equally appreciative of the Division's scrutiny of the LBO-Ski Ltd. transaction. However, it appears that the Division has been misled in this regard. Cranmore Mountain, which now operates in conjunction with Attitash Mountain, represents collectively with Attitash about 220,000 skier visits per year out of the approximate 2,000,000 skier visits annually in all the New Hampshire State Areas. This is hardly a monopoly threat to the Ski Industry in New Hampshire.

For 25 years, Cranmore Mountain has struggled financially with the last two owners leading to insolvency and bankruptcy. Cranmore Mountain is vital to the economy of the North Conway, Conway and Fryeburg, Maine area. This area has struggled with the plight of Cranmore Mountain and other local ski areas. The Town is vitally involved in the mountain and the well being of the Mountain is vital to the Town. After twenty-five years of apprehension, investments and support, the purchase of Cranmore Mountain by LBO was the stability needed to rejuvenate Cranmore to viability.

Cranmore Mountain was a birthplace of skiing in Northern New England. The mountain has produced scores of Olympic skiers that have represented the United States Ski Team.

The forced sale of Cranmore Mountain will condemn this facility to mediocrity and possible extinction. Leaving Cranmore Mountain as a part of LBO Holdings or the American Ski Company will not impair the Ski Market in New Hampshire and will allow the Mount Washington Valley Area to pursue its viability in the winter ski business.

Your favorable consideration in this matter will be appreciated. Thank you for your courtesy.

Sincerely,

John J. Reilly, Jr.

cc. Senator Gregg, Senator Smith, Congressman Bass, Congressman Zeliif.

Jennifer K. Savoie

June 28, 1996.

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street NW., Washington, DC 20530.

Re: Mount Cranmore, New Hampshire.

Dear Mr. Conrath: I am saddened and concerned about your decry that LBO Holdings must divest itself of Mount Cranmore in order to purchase SKI Ltd. As a long-time resident of the Mt. Washington Valley, I have witnessed Mount Cranmore's steady decline, and then its recent resurgence under the guidance of Les Otten. It is a comforting scene in the wintertime to see the lights on at Mt. Cranmore again in the evening. The mountain has long been a focal point of our Valley.

I am concerned that your decision will do much more harm to this Valley than good. Who else could possibly afford to buy the very small, family-oriented Mount Cranmore and continue to upgrade it enough to compete in today's marketplace * * * witness the hardship and bankruptcy of nearby Black Mountain Ski Area in Jackson, as well as countless other mountains that have fallen by the wayside (Mount Whittier, King Ridge, etc.).

As a teacher of economics, I understand well the concept of competition and a free marketplace. However, Mount Cranmore is a unique situation which deserves special consideration and accolades to Mr. Otten for bringing it back from the brink of bankruptcy. In addition to the potential loss (forever!) of our beloved Mount Cranmore, consider the economic impact on the local economy of all the lost jobs at the mountain.

As the Northeast continues to struggle out of our prolonged recession, I urgently request that you reconsider your decision. I don't believe that Mount Cranmore will survive without LBO Holdings, and I do believe that many jobs will be lost along with the ski area.

Sincerely yours,

Jennifer K. Savoie,

PO Box 715, 17 Skyline Drive, Intervale, NH 03845.

Frank Murphy and Family

June 29, 1996.

Mr. Craig W. Conrath,

Chief of Merger Task Force Antitrust Division, US Department of Justice, 1401 H Street, NW, Washington, DC 20530.

Re.: Les Otten and the Forced Sale of Mount Cranmore Ski Area.

Dear Mr. Conrath: In the past ten years Mt. Cranmore has had three different owners. Prior to Mr. Otten it was always a ''leaking, leaner'' of a ski area. That's a sailors term to describe an old, rusty bucket of a ship. In one year of ownership Mr. Otten has brought sparkle to Cranmore with torch light parades and fire works. He has run it with all the flair of a Swiss ski resort.

In October, 1995 with the promise of Mr. Otten's presence in the Mount Washington Valley at both Cranmore and Attitash, I moved my family from Gloucester, Massachusetts to North Conway, New Hampshire. Are you familiar with Mr. Otten's campaign to bring people to the North Conway area? He ran a very successful marketing campaign called ''Ski the Presidentials!'' This revved up the Mount Washington Valley economy. Exactly why I moved here.

I own an eleven year old, center entry, colonial on .6 acres of land with views of North and Kearsage Mountains. If the Justice Department sticks to its decision that Mr. Otten must sell Cranmore, can you locate a buyer for my home as well?

Sincerely,

Frank, Marie-Louise, Brendan, Dylan, and Leigh Erin Murphy.

c.c. Senator Bob Smith, 50 Phillippe Cote Street, Manchester, NH 03101, Senator Judd Gregg, 28 Webster Street, Manchester, NH 03104, Congressman Charlie Bass, 142 North Main Street, Concord, NH 03301, Congressman Bill Zeliff, 340 Commercial Street, Manchester, NH 03101.

Jean M. Lees

June 30, 1996.

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice.

Dear Mr. Conrath: Three generations of my family have enjoyed skiing and hiking on the slopes of Cranmore. The Cranmore Mt. complex has been the focus of many town activities—sports and festivities—since the skimobile was built in 1939. Therefore, we are deeply concerned that Cranmore will continue to survive and prosper.

We had hoped, however, that it would not become a Sunday River Type ski operation with massive expansion and rapid development. While Sunday seems a highly successful ski area, it has done little to enhance the Bethel region. The recent constructions near the Bethel railroad site look extremely shoddy. Here, we have many small interests, local inns and shops that would not necessarily benefit by one major controlling operation.

Therefore, many of us favored the Justice Department's move to curb L.B.O. Corp.'s acquisitive and pervasive tactics before Cranmore and its surrounding land become part of a huge New England monopoly.

Sincerely,

Jean M. Lees.

Tech Works

June 30, 1996.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Washington, DC 20530.

Re: LBO–SKI Ltd Acquisition—Cranmore Ski Resort.

Dear Sir: I write you to express my strong opposition to DOJ's requirement that Cranmore Ski Resort be divested by LBO in order to gain approval for the subject acquisition. My reasons are threefold.

Since I moved to Conway, NH four (4) years ago, Cranmore has been a weak, sick ski area, recovering only since its acquisition by LBO somewhat over a year ago. Even in its former weakened condition, it was and continues to be vital to the winter time health of the Mount Washington Valley. If Cranmore is again forced to struggle for capital and marketing clout (or eventually fail for the lack of them), this Valley and its some 20,000 residents will be irreparably damaged. What assurance is DOJ giving that this will not happen? Does the DOJ even care, or is the intellectual pursuit of ''competition'' more important?

Downhill skiing, while probably the most significant, is but one of several wintertime sports that attracts people to The North Country. Downhill skiing competes with cross country skiing, snowmobiling, ice climbing, ice skating, etc. This raises the following question: What is considered to be the ''relevant market'' on which this divestiture is being required? So what if American Ski Company would own 25% of the downhill skiing in the Northeast! I believe the relevant market is must broader than downhill skiing in the Northeast. On occasions too numerous to count, I personally have decided not to downhill ski in favor of a less expensive alternative. Did DOJ take these other wintertime competitors into account? What kind of market share would American Ski Co. have if these directly competitive alternatives were taken into account? Far less than 25%, and far less than the market share of many other acquisitions that have been approved by DOJ.

Aside from the other sports that compete with downhill skiing, winter vacation destinations compete on a *worldwide basis.* Specifically, downhill skiing in the Northeast competes with skiing in the West and in Europe. Again, based on personal experience when I lived in Pennsylvania for 20 years, I used to take the family for a ski week in the Northeast (Vermont, Maine and Canada). Later, I began taking them to Colorado, Utah and the like as air travel became cheaper and more convenient. We also once went to Europe. The competition wasn't between ski areas in NH and VT; the competition was between the West/Europe/Canada and the Northeast. In fact, I believe statistics will show that the Northeast is losing this battle in a bad way. Where is money being spent for expansion? Certainly not in the Northeast.

Cranmore had become a new and wonderful place under LBO, in just one year! A new hi-speed quad chair was installed; restaurants were improved; grooming was made more exciting; and plans were underway for additional slopes and lodging. Now we are back to the old uncertainties, questionable supply of new money, only regional marketing, if that—and this is supposed to compete with the likes of Vail, Deer Valley, Telluride, Beaver Creek! Forget it. Cranmore is finished if divested from LBO; our best hope is a marginal, regional slope that may not even be able to pay the electric bill to make snow as required (like before). The worst case would be failure—would that foster competition?

Please reconsider your decision. Please give Cranmore a chance to compete with the real players on a worldwide basis. Let them remain part of an organization that can advertise nationwide, even worldwide, to attract customers from afar who want to ski a variety of slopes in the Northeast on a package basis of some sort. If their prices rise too much, people aren't dumb with their discretionary spending. They will ski the West, or Canada, or Europe. If they can't afford places like that, they will ski cross country, ice skate, or just build a snow man.

To think that LBO/American Skiing Co. would have the market power to raise prices in an anti-competitive way is about like saying they have the power to make it snow. They have neither. Let them build New England skiing so that once again this region can compete with the current powerhouses of skiing. Then we might see some real competition!

Respectfully submitted,

David S. Urey.

cc: Congressman William Zeliff, Les B. Otten, The Conway Daily Sun.

Thomas A. Mulkern

Craig W. Conrath,
Antitrust Division, Dept. Of Justice, Washington, DC 20530.

Dear Mr. Conrath: Back in the 1930's, Harvey Gibson managed to obtain the release of Hannes Schneider from a German concentration camp and to introduce him to Cranmore Mt. in No. Conway, NH. It marked the beginning of Alpine skiing in North America.

From that modest birth, skiing has become a mammoth industry spawning giant areas like Vale, Aspen, Tahoe, Sun Valley, Jackson Hole, et al. The tiny area of Cranmore Mt. remains eminent only as a historical footnote.

Yet, despite its relative obscurity, it has somehow managed to attract the attention of the Antitrust Division of U.S. Dept. of Justice. As one who has spent a lifetime as a devotee of alpine skiing and who owns property in the area involved I am writing to you to protest this action.

In the New England ski industry whose past is strewn with failures, Les Otten stands out like a beacon of light in a sea of disaster. Until he arrived on the scene, Mt. Cranmore suffered through a succession of inept performers to the point of imminent bankruptcy. Let Otten comes to the rescue with a major infusion of capital investment and operational know-how and not only breathes new life in the resort but promises to expand it to a first class ski area once again.

For this he gets not the applause he has earned for saving jobs, restoring property values and insuring the future of the village of No. Conway but instead, the attention of the Antitrust Division of the U.S. Department of Justice.

Is it any wonder recent national polls reveal an alarming portion of the American public becoming increasingly disenchanted with the federal government because of what they perceive to be intrusion in their private lives?

I see this as an example of such intrusion and I intend to use all the support I can find to oppose it.

Sincerely,

Thomas A. Mulkern,

4 Cortland Lane, Lynnfield, MA 01940.

SURRETTE TRUCK CAPS

Craig W. Conrath,
U.S. Dept. of Justice, 1401 H. Street NW, Washington, DC 20530.

Dear Mr. Conrath: I think the Antitrust Division is making a big mistake by asking LBO Enterprises to divest Mt. Cranmore for a number of reasons.

The first reason is, we in the Mt. Washington Valley live on tourism. With people not coming to Conway, it will hurt many small business people.

Mt. Cranmore is a weak link in the ski business. By taking it out you only make LBO's other holdings, Attiash, Bear Peak, and Sunday River, stronger.

Many ski areas in N.H. have closed down. If LBO' prices get too high, I am sure other areas will reopen.

Sincerely,

Richard Surrette.

Ronald K. ''JAZZID'' Moore

Craig W. Conrath,
Chief, Merger Task Force; Antitrust Division, U.S. Dept of Justice, 1401 H St NW, Washington, DC 20530.

Dear Mr. Conrath: I am writing in regard to the divesture of Cranmore Mt Ski Area in North Conway, NH from LBO. I feel this is the wrong decision, since the ski area has not done well in recent years and almost went belly up! Until this the first year under LBO when it turned a profit! Ski areas are a very iffy enterprise as it is, what with depending on mother nature, the economy and the consumer! Speaking of the consumer, we could always ski elsewhere if LBO raised the prices at Cranmore, which I don't think he will. LBO can run ski areas profitably, and provide jobs for people in the community.

So, Craig, I beg you, do the right thing, which We seldom see done in DC and let LBO continue as the ownership of Mt. Cranmore! Thanks for listening.

Sincerely yours,

Ronald K. Moore.

Capt. David E. Bartlett

Mr. Craig W. Conrath,
Chief, Merger Task Force; Antitrust Division, US Department of Justice, 1401 H. Street, NW, Washington, DC 20530.

Subj: Divestiture of Cranmore LBO/SKI Ltd merger.

Dear Sir: As a professional ski instructor at Mt. Cranmore for the past 13 years. I have worked for at least 4 different owners/ managers. LBO was the first to bring stability and confidence. The current ruling does not undermine but destroys both of those issues. In the list of areas impacted by the merger, in my opinion Mt. Cranmore is [''Physically'',] the ''runt of the litter''. I fail to see how forcing the [seperation] of the smallest area breaks a monopoly. If the concern is regionally, due to its [proxcimity] to Attitash/Bar Peak, the only entity that has openly voiced interest is another ski area 25 minutes up the road.

This divestiture is possibly the final nail in Mt. Cranmore's coffin. The potential for Cranmore's growth, and consequently, the growth of skiing in New England will only be enhanced by your review and reversal of this decision.

Resp.

David E. Bartlett.

M/M Robert M. Fisher

Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, U.S. Dept. of Justice.

No doubt you have already received more than your share of letters concerning the impending divestiture of Cranmore and Waterville by LBO. And I am sure that you have heard Representative Zeliff's arguments on behalf of the whole Mt. Washington Valley whose economy depends so desperately upon the ski industry.

As a long-time resident, retired public school teacher and ski coach, all of whose children have to a certain degree achieved their academic objectives in part because of their skiing experiences here in the valley, and whose livelihood has also been enhanced by skiing opportunities here, I must argue strongly in favor of reconsideration of the divestiture decision.

Cranmore was financially shakey when LBO rescued the operation with a transfusion of capital and know-how which enabled the ski area to function competitively for the first time in a number of years of—dare I say?—modest management. Perhaps because our youngest daughter was a two-time Olympian on the U.S. Ski Team and has continued her career as a coach, as have all our other children who got their start at the Junior Program on Cranmore, I am particularly sensitive to the needs of the community. Even more so because severe school budget cutting (in the order of 10%) threatens that very junior program which has spawned so many local Olympians, teachers, and coaches.

Thank you for reading these comments.

Sincerely yours,

M/M Robert M. Fisher,

615 Potter Road, Center Conway, NH 03813.

Robert A. McDaniel and Anita McDaniel

June 1996.

Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, U.S. Dept. of Justice, 1401 H Street NW, Washington, DC 20530.

Dear Mr. Conrath: I was very disappointed that the members of the justice department's merger task force decided to exercise their authority to limit the potential for monopolistic practices in the New Hampshire ski industry. I emphasize the word potential for the following reasons:

LBO would own only 25 percent of the New England ski market.

Competition from Massachusetts, Vermont and Maine, which abut the small state of New Hampshire, is fierce.

The government has perfect price control mechanisms through Mt. Sunapee and Cannon Mountain, which are both state-owned ski areas.

The fact that New England does not have a single destination ski area to compete with areas such as Aspen, Breckenridge, Tahoe, Snowbird, Jackson Hole, Steamboat or Sun Valley.

Many ski industry owners, with the exception of Les Otten, have encountered a real struggle to remain solvent, much less make significant expansion investments.

Perhaps the larger issue is not competition but employment in New England ski towns. Government officials should take a look at what the real conditions are before restricting the economy.

My disappointment stems from the over-reach of Washington officials at a time when New England has fortunate to find someone with the interest and commitment to turn it into a major player in the ski industry.

Very truly yours,

Robert A. McDaniel,

Anita McDaniel.

19 Bellview Ave., Marehorn, MA 01752.

Gilbert G. Mahan

June 1996.

Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street NW, Washington, DC 20530.

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Very truly yours,

Gilbert G. Mahan,

P.O. Box 278, Kearsarge, NH 03847.

Robert E. and Joan W. Billings

June 1996.

Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street NW., Washington, DC 20530.

Dear Mr. Conrath: I was very disappointed that the members of the justice department's merger task force decided to exercise their authority to limit the potential for monopolistic practices in the New Hampshire ski industry. I emphasize the word potential for the following reasons:

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My disappointment stems from the over-reach of Washington officials at a time when New England has been fortunate to find someone with the interest and commitment to turn it into a major player in the ski industry.

Very truly yours,

Robert E. & Joan W. Billings.

David A. Pope

July 1, 1986.

U.S. Dept of Justice, 1401 H Street, NW, Washington, DC 20530.

ATT. Mr. Craig W. Conrath, *Ch. Merger Task Force, Antitrust Div.*

Subject: Forced Sale of Cranmore MT by Les Otten/The American Skiing Co.

Dear Mr. Conrath: In your effort to be fair, you are about to commit the all time miscarriage of justice by forcing the Amer. Skiing Co/Les Otten to sell Mt. Cranmore in No. Conway for the following reasons:

(1) By forcing the sale of Mt. Cranmore while it makes good ''Window Dressing'' for the Anti-Trust Div., it will be disastrous for the town of No. Conway.

(2) When Les Otten bought Cranmore, his presence stabilized the real estate market, and brought new confidence to the Mt. Washington Valley.

(3) Les Otten spent (3) three million or more dollars and rejuvenated the entire mountain and created great skiing.

(4) He started making snow in Nov 1995 and opened the earliest season in 58 years. (No one else thought it could be done.)

(5) His combined ski ticket between Cranmore and Attitash-Bear Peak gave the skier the best choice and the best value-saved money.

(6) Competition is everywhere—Wildcat, Bretton Woods, Black Mt. Pleasant, Mt.

Franconia, Sunapee, Loon, Ragged Mt. Gunstock, Stone VT Okemo and more.

(7) Les Otten (The American Skiing Co.) will always be strong competitors because he knows how to run a ski area, how to make snow, how to groom, how to feed people and how to listen to people's complaints and then respond.

(8) Small areas like Cranmore and Waterville Valley need a strong, financially sound owner who is not afraid to invest money and then want to see the results build.

(9) If you rescind your push for the sale of Mt. Cranmore, you can rest assured that it will stay viable and be expanded and the entire valley will benefit. If it is sold to someone else, the reverse will happen and skiers will be paying more and receiving less. *Please—Please* rescind the Anti-Trust Div. actions in forcing Les Otten to sell anything. The skiing industry does not need Anti-Trust protection. People can keep prices and competition in line. It costs too much, skiers go elsewhere—or not at all.

Thank you,

Very Truly Yours,

David A. Pope,

Box 120, Kearsarge, NH 03847.

PS. Thousands of people think the same way I do.

Mrs. Janet Cooper

Please vote *to reverse the D.O.J.*'s decision: Mt. Cranmore, N. Conway N.H. needs LB Otten's expertise to operate the ski area *successfully.*

It is *most* important for the economy of Mt. Washington Valley.

Thank you,

Mrs. Janet Cooper,

45 Plainfield St., Waban, MA 02168.

Jeff Barley

Dear Sir: Forcing LBO to divest itself of Cranmore ski area makes no sense. Cranmore is the life blood of North Conway and North Convey is the Keystone of the travel and tourist industry of northern N.H. We have seen one owner after another come & go because of limited capital. We finally have a stable owner and you're taking them away. Ridiculous.

Jeff Barley

StoryLand

July 2, 1996.

Mr. Craig W. Conrath,

Chief of Merger Task Force, Antitrust Division, US DOJ, 1401 H Street, NW, Washington, D.C. 20530.

Dear Mr. Conrath: I am the founder of Story Land, a children's theme park and a museum depicting our state's 350 year history.

I grew up in this valley, and except for military service, have lived here all my 76 years. I was part of the birth and growth and investment needed to bring a winter industry into being. It is a risky business wherever it exists anywhere in the world, but it is the focal point of the economic activity in an area. Without the ski area, the peripheral businesses don't sprout.

LBO has come at a very propitious time in the evolution of this industry and his concept and monetary leverage bring this fragmented industry into the 21st century. Will LBO be able to control the skier market and pricing in this upper New England area? I don't think so. Its share will provide the economics of scale necessary for the huge capital expenditures and still leave ⅔ of the market to entrepreneurs to offer alternatives in composition and pricing. This country was built on this concept.

I write in the hope that you will reconsider the proposed action as a condition for the permanent merger with SKI.

Yours truly,

Robert S. Morrell,

Founder-Chairman.

cc: Congressman Zeliff,
Senator Judd Gregg,
Senator Bob Smith.

Roy A. Lundquist

July 2, 1996.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street NW, Washington, DC 20530.

Subject: Divestiture of Mount Cranmore and Waterville Valley.

Dear Mr. Conrath: I am writing this letter to express my concerns regarding the recent decision that L.B. Otten and the American Ski Company divest the Mount Cranmore and Waterville Valley ski areas. I believe this decision to be contrary to the best interests of the skiing public and the communities in which these ski areas do business.

I have been an ardent skier for over 50 years. In my career I was employed in the defense electronics business as an engineer, program manager and marketing manager. Now retired, I still ski over 100 days a year. I have seen the ski industry grow from a fledgling sport in the '40's and '50's through the growth years of the '60's and '70's to the stagnation that began in the '80's and continues to exist. It has been well documented by the industry publications that the skiing population has remained constant for the last decade. It is not, by any measurement, considered to be a growth industry. To the contrary, it is an industry that is desperately trying to survive. In New England alone, the number of ski areas that operate today is only about one-half the number that were in existence 20 years ago.

The ski area business today is unique. It has become a business that is extremely capital and energy intensive. Todays skier demands much more of the ski areas than was the case several years ago. They demand high speed lifts, both fixed and detachable, which cost anywhere from $1 million to $2 million to install. They demand extensive snowmaking to avoid the vagaries of normal winters, which come at a very high cost to install and have a very high energy cost to operate. And then they demand that all this snow be meticulously groomed by a fleet of machines that cost around $200,000 each. In addition, skiers want to have fine amenities in the lodges and restaurants.

It is interesting to note that the ski areas that are the most successful are those that have invested considerable capital in providing what the skiers want: namely high speed lifts, good snow making and good grooming, as well as good amenities. It is also interesting to note that the successful ski areas not only draw the greatest number of skiers by far, but they also charge the highest lift ticket prices. One must conclude from this that the skier of today is willing to pay the market price for a good product. Certainly lower priced ski areas exist. But they do not provide the quality ski experience that the major areas provide, and therefore do not attract the number of skiers. Without the skier visits these lower priced areas cannot generate enough revenue to make the capital improvements necessary to attract more skiers. It is a classic ''Catch 22'' situation. In the long run the lower priced areas either continue on in a marginal profit situation catering to a small niche of skiers, or, as has happened to so many small ski areas, they go out of business. It appears that, because of the capital intensive nature of today's ski business, that size and economies of scale are essential not only to provide a quality product, but to generate the necessary volume of skier traffic to make a profit.

I would like to discuss the Mount Cranmore situation, as I live in North Conway where Mount Cranmore is located. Cranmore is the birthplace of American skiing. It is here that the legendary Hannes Schneider came to from Austria in 1939 and began teaching skiing to the ski hungry public. Cranmore grew as the sport developed in the '40's and '50's. However, it did not follow the boom of the '60's and '70's as newer ski areas came into existence. Cranmore did not continue to reinvest in capital improvements. For years the popularity of Cranmore declined, and even though it priced its tickets lower than the newer areas, specifically Attitash, its skier visits decreased. It went through a series of ownership changes, but capital improvements were minimal or ill-conceived. Cranmore was on the verge of bankruptcy and facing possible closure when it was purchased (from the bank) by Les Otten. Otten did several things. He marketed it in conjunction with Attitash and sold a combined facility lift ticket. He made major capital improvements: addition of a high-speed detachable chair lift, expansion and upgrading of the snow making system, increasing the fleet of groomers, improving the restaurants and amenities. He made snow earlier than ever before, and not only opened for the season earlier than ever, but extended the closing date to its latest ever. He announced plans for a major expansion to an adjacent mountain. And yes, he increased the price of lift tickets to the same as Attitash. And what happened? Skier visits increased by 50% over the previous year. And this in spite of the fact that lower priced ski areas continued to operate within a 30 mile radius, namely Black Mountain, King Pine, Wildcat, Shawnee Peak and Bretton Woods.

The Department of Justice ruling on the divestiture stated that the primary reason was to prevent the American Ski Company from creating a monopoly that would eliminate lower priced alternatives from the skiing public. I find this reasoning to be flawed, particularly with respect to Mount Cranmore, for the following reasons:

There are five other ski areas within a 30 mile radius that provide lower ticket pricing than the Attitash/Bear Peak/Cranmore complex. These are Black Mountain, King Pine, Wildcat, Shawnee Peak and Bretton Woods.

The quality of the product demanded by today's skier requires large capital expenditures by the ski areas. The skier is willing to pay the market price in order to get the ski experience that results from the capital expenditures. The most successful ski areas, as measured by skier visits, universally charge the highest prices for lift tickets.

The skiers from the metropolitan areas of Boston, Hartford, Portland and New York comprise the majority of the skiing population in New England. They have many alternatives other than those owned by the American Ski Company. They will be attracted to those areas that provide a quality product at a reasonable market price. This competition will provide stability to the price of lift tickets.

The size of the skiing population is constant, and is not predicted to increase. In order to maintain or increase market share, ski areas will have to continue to invest in capital equipment. This requires that the areas increase the number of skier visits, and/or expand their operations so as to provide efficiency and cost improvements through economies of scale.

Small ski areas will continue to provide lower cost alternatives, but at the expense of the quality of the ski experience, i.e. slower lifts, less snowmaking, less grooming and poorer amenities. If these smaller ski areas can not attract sufficient skiers, they too, like so many have already, will go out of business. It is very possible that Mount Cranmore will return to this status as a marginal ski area with an uncertain future if the divestiture is carried out.

I request that the Department of Justice reconsider its position on the divestiture of Mount Cranmore and Waterville Valley. As I have pointed out, this action will be detrimental to the skiing public, and to the individual areas, and ultimately to the local community. The capital needs of the two areas in question will best be served by continuing their relationship as part of the American Ski Company. Sufficient lower priced ski areas exist in the immediate surrounding area to satisfy the Department of Justice concerns.

Very truly yours,

Roy A. Lundquist.

cc: Rep. William Zeliff,
Sen. Judd Gregg,
Sen. Robert Smith.

Richard O. and Gloria Pinkham

July 3, 1996.

Craig W. Conrath, Chief,
Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street NW, Washington, DC 20530.

Dear Mr. Conrath: We are very disappointed that the members of the justice department's merger task force decided to exercise their authority to limit the potential for monopolistic practices in the New Hampshire ski industry. We emphasize the word potential for the following reasons:

—LBO would own only 25 percent of the New England ski market.
—Competition from Massachusetts, Vermont and Maine, which abut the small state of New Hampshire, is fierce.
—The government has perfect price control mechanisms through Mt. Sunapee and Cannon Mountain, which are both state-owned ski areas.
—The fact that New England does not have a single destination ski area to compete with areas such as Aspen, Breckenridge, Tahoe, Snowbird, Jackson Hole, Steamboat or Sun Valley.
—Many ski industry owners, with the exception of Ies Otten, have encountered a real struggle to remain solvent, much less make significant expansion investments.

Perhaps the larger issue is not competition but employment in New England ski towns. Government officials should take a look at what the real conditions are before restricting the economy.

Our disappointment stems from the over-reach of Washington officials at a time when New England has been fortunate to find someone with the interest and commitment to turn it into a major player in the ski industry.

Very truly yours,

Richard O. and Gloria Pinkham,

44 Powers Road, Concord, MA 01742 and Westside Road (P.O. Box 361, Glen, NH 03838

cc. Rep. Bill Zellif.

Cynthia A. Feltch

July 3, 1996.

Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H. Street, N.W., Washington, DC 20530.

Dear Mr. Conrath: This is regarding the forced divestment of Mount Cranmore and Waterville Valley by LBO Enterprises and S–K–I Ltd. prior to their merger forming The American Skiing Company. Being a business person who resides in the Mount Washington Valley of New Hampshire and an avid ski enthusiast, I feel compelled to communicate my dismay with the decision which has been made.

Frankly, the logic of this decision by the Dept. of Justice alludes me. This determination looks and feels an awful lot like bureaucratic involvement in an area much less understood than bits, bytes and proprietary software. This is a business of recreation. It is not a life sustaining activity required for long term human existence. Moreover, it involves a rather small segment of the U.S. population which can afford the expenditure of discretionary dollars. Skiing is not part of our daily allowance of vitamins.

I do not believe that the DOJ is looking at the true demographics of the ski industry in the Northeast when it says that Waterville, Cranmore and Attitash/Bear Peak garner a 90%+ ratio of skier visits from Massachusetts and Rhode Island. The simple fact is, you are not comparing apples to apples. Each of these area has different terrain, amenities and accommodations to offer their visitors. What one mountain may do well, another does not offer at all. Cranmore is known as a family mountain. This means the terrain is easier to ski and the area caters to small children. Attitash on the other hand offers significantly more difficult terrain and attracts skiers who do not want to ski with small children. Waterville is so far removed from both of these areas in the winter months due to access across the mountains that it does not share skiers with either Cranmore or Attitash. Typically, visitors who are skiing on the western slope (I–93 side of the mountains) do not venture over to the eastern slope (Rt. 16/Mt. Washington Valley). While visiting Waterville, they will avail themselves of the skiing at Loon Mountain, Cannon Mountain or Gunstock, all of which are owned and operated by other companies. Likewise, the same can be said for skiers on the eastern slope who may choose from King Pine, Black Mountain or Wildcat if they want a change from Cranmore or Attitash.

To point to two specific mountains and contend that they create an unfair trade advantage is ludicrous. With all the aforementioned choices, skiers and their families are not being held hostage by one company. This is a market driven industry. If the consumer does not like what is being offered, they can go elsewhere and be satisfied. No one is holding a gun to skier's heads and making them spend their discretionary income on this sport. No one at LBO or S–K–I Ltd. has given those of us who operate businesses within their geographic areas reason to believe that they are anything less than savvy entrepreneurs. Why should we assume the worst now that these two companies are joining forces to bring the industry better skiing experiences?

In closing, I believe that the forced divestment of Waterville and Cranmore bodes very badly for the Camden, NH and North Conway, NH areas. The capital investments made by LBO and S–K–I in the preceding years marked an economic turning point for these two towns. Prior owners and operators did not have the capital or the vision to improve these two areas to any great extent. What LBO and S–K–I did in their short tenures was remarkable and encouraging to those of us who witnessed the improvements. To cut this metamorphosis short is to blindly sever the opportunities of two communities who were just beginning to make a comeback in the ski industry.

Respectfully,

Cynthia A. Feltch,

PO Box 40, Bartlett, NH 03812.

Signature Breads

July 5, 1996.

Craig W. Conrath,
Merger Task Force, Antitrust Division, U.S. Department of Justice, 1404 H Street, Washington, D.C. 20530.

Dear Mr. Conrath: It is unfortunate that the members of the justice department's merger task force have decided to exercise their authority to limit the potential for monopolistic practices in the New Hampshire ski industry. Please note emphasize on the word ''potential'' for the following reasons:

LBO would own only 25% of the New England ski market.
Competition from Massachusetts, Vermont and Maine which abut the small state of New Hampshire is fierce.

The government has in place price control mechanisms through state owned ski areas—Mt. Sunapee and Cannon Mountains.

The fact that there are no single destination ski areas in New England to compete with areas such as Aspen, Breckenridge, Tahoe, Jackson Hole, Snow Bird, Steamboat, SunValley, etc.

Many New England ski owners, Les Otten is an exception, have had a very real struggle just to remain solvent and do not have the resources to make significant investments.

Perhaps the larger issue is not competition but employment in New England ski towns. Government officials should look at what the real conditions are before taking actions which will restrict the economy.

It is very disturbing to note the over reach of Washington officials at a time when New England has been fortunate to find someone with the interest and commitment to turn it into a major player in the ski industry.

Sincerely,

Harold Berk,

300 Middlesex Avenue, Medford, MA 02155.

Boy Kyle

Dear Mr. Conrath: As an avid skier (not a rich one) I think the decision on Cranmore in N.H. is not a very good one.

Les Otten bought Cranmore when it was down and out and brought it back where it should be. To force him out makes no sense at all.

You must realize there are not to many people who can afford to buy a ski area, much less someone who even wants one.

We'll take care of the price of lift tickets. When they get to high we just won't buy any. Let the market dictate the price, not the government. I'm sure you have bigger fish to fry!

Boy Kyle,

Bartlett, N.H.

James Lane

July 8, 1996.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Dept. of Justice, 1404 H Street NW, Washington, D.C. 20530.

Dear Sir: Your efforts to prevent LBO Holdings from maintaining ownership of Cranmore Ski area in No. Conway, N.H. are representative of ignorant government intervention in a business and ultimately in the everyday lives of residents in this area. You need a vision—a vision we all have up here in the Mt. Washington Valley that what LBO Holdings has initiated is of benefit to *EVERYONE.*

The Antitrust Division decree is a disgraceful authoritarian governmental punishment to a business venture that has been successful. LBO Holdings' businesses have been a god-send for the people here in the Valley and for all those who come here because of LBO's business acumen. There is something radically awry in your Merger Task Force activities. You need to be advised by people who intuitively know that your directives in this matter are ill-advised, ill-informed, ill-judged, and ill-willed toward anyone who could possibly benefit from the business foresight of LBO Holdings.

If it is true that what is good for business, is good for the Nation as a whole, then you are on the wrong track by depriving this area of the benefits that have accrued from LBO Holdings' presence in this Valley. You need to keep in the forefront of your mind, that if LBO Holdings had not bought and nurtured Cranmore, there would have been no Cranmore for you to squack about. Indeed, the competition is not smashed by LBO's wizardry, there just isn't any competition without his presence at Cranmore. Therefore, you need to recind your interference now and we all look forward to your doing so. Thank you.

Yours truly,

James Lane,

P.O. Box 485, Jackson, N.H. 03846.

William J. Denning

Mr. Craig Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Dept. of Justice, 1401 H Street NW, Washington, D.C. 20530.

Dear Mr. Conrath: A period of time has passed since the news of forced divestiture of Mt. Cranmore was made public, with that in mind, I have had adequate time to put together my thoughts on the subject.

I have little knowledge on term ''monopoly.'' Certainly, I do not qualify as an expert. Understanding says that the reasoning behind the forced divestiture of Cranmore and Waterville, is to keep one organization—LBO—from controlling too much of one business in one area so prices remain competitive.

I would hope that the economic well-being of the people in a small area of New Hampshire could be factored into the process.

If we look at Mt. Cranmore in particular, their recent and not so recent past, it becomes quite obvious that they have had troubles, which include bank take-over. These troubles may have been due to a real misunderstanding of the ski industry; they may have been due to economic times; they may have been due to a lack of capital. I am unable to say with any degree of certainty. What I am able to say with a degree of certainty is that since the LBO organization has taken over, capital improvements have been made, management with an understanding of the ski industry (and it is unique) has been put in place, and the mountain is a viable area once again.

This small N.H. valley needs this area in order to retain its economic health. This ski area needs a strong, willing and capable management in order to survive. The LBO organization has a track record which proves it is the right one, in the right place at the right time.

It has always been the prerogative of people to write to persons in charge, voicing opinions which may or may not be contrary. We would hope these letters are read and even considered in final decisions. In this particular vein, the local media have published remarks allegedly attributed to Mr. Charles Biggio. These concern the statement or remarks about the Justice Department never has been reversed on the subject of divestiture. If this is true, I think the word infallible might apply to this person. If this is true, I think the person in question should be working two or three planes above where he/she now is.

It is quite obvious that Mt. Cranmore has been turned around. It is also quite obvious that I cannot understand a forced divestiture which would be so harmful to the people in a small area of New Hampshire.

Very truly yours,

William J. Denning.

T.M. Egbert, Jr.

July 9, 1996.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street NW., Washington 20530.

Dear Mr. Conrath: Les Otten, with his American Skiing Company, is trying to revitalize a large part of the U.S. ski industry which has been flat for a number of years.

If there ever was a case that called for ''benign neglect'' on the part of the Justice Department, this is it.

The agreement requiring divestiture of Cranmore Mountain in North Conway, N.H. should be rethought. Cranmore is a small ski area. For the past 15 years or so, small, independent ski areas have either 1) grown bigger or 2) linked up with larger companies or 3) gone out of business. There are no other alternatives.

Cranmore, as you certainly know, had been struggling for years and was in the hands of its bankers. Otten bought it last year, revived it with substantial new investment and would have been able to keep it going as part of the Attitash Bear Peak complex.

Your divestiture decision takes Cranmore backwards.

If anyone can be found to buy it from Otten, Cranmore will be faced with the same insurmountable problems that it had previously—trying to compete with the larger ski operations in the North Conway—Western Maine market. Cranmore is unable to stand alone. This is an established fact.

Consequently, your well-intended efforts to preserve competition will have exactly the opposite effect. Moreover, the demise of Cranmore will cause serious economic hardship to dozens of businesses in the area and to property-owners whose condominiums next to a defunct ski hill will be next to worthless.

Moreover, your spokeswoman who laid great emphasis on the need to preserve skier discounts, displayed a severe lack of expertise. Discounts do not drive the ski business. Terrain, snowmaking, grooming, skier services and amenities are what count with skiers and what they are willing to pay for. Small ski areas are simply unable to provide these at competitive levels.

It appears that the decision calling for divestiture is based on outdated and unrealistic assumptions. I urge you to reconsider the decision and to put it on ''hold''; then to dig deeply into the facts of the ski industry. If you do, you will find that it makes sense to rescind the divestiture agreement.

That would enable you to observe what happens in the next few years. Then, if you find that the American Skiing Co. is, in fact, hindering competition, you can take corrective action.

The action you have taken this year is, at best, premature. At worst, it will kill Cranmore, not preserve it. It will lessen competition, not promote it.

Sincerely,

T.M. Egbert, Jr.,

Former member, Board of Directors, Attitash Ski Lift Co.

Henry DiRico

July 10, 1996.

Craig W. Conrath,

Merger Task Force, Antitrust Division, U.S. Department of Justice, 1404 H Street, Washington, D.C. 20530.

Dear Mr. Conrath: It is unfortunate that the members of the Justice Department's merger task force have decided to exercise their authority to limit the potential for monopolistic practices in the New Hampshire ski industry. Please note emphasis on the word ''potential'' for the following reasons:

LBO would own only 25% of the New England ski market.

Competition from Massachusetts, Vermont and Maine, which abut the small state of New Hampshire, is fierce.

The government has in place price control mechanisms through state-owned ski areas—Mt. Sunapee and Cannon Mountain.

The fact that there are no single destination ski areas in New England to compete with areas such as Aspen, Breckenridge, Tahoe, Jackson Hole, Snow Bird, Steamboat, Sun Valley, etc.

Many New England ski owners, Les Otten is an exception, have had a very real struggle just to remain solvent and do not have the resources to make significant investments.

Perhaps the larger issue is not competition but employment in New England ski towns. Government officials should look at what the real conditions are before taking actions which will restrict the economy.

It is very disturbing to note the overreach of Washington officials at a time when New England has been fortunate to find someone with the interest and commitment to turn it into a major player in the ski industry.

Sincerely,

Henry DiRico.

Fred and Milly Pereira

July 11, 1996.

Craig W. Conrath,

Chief of Merger Task Force, Antitrust Division, US DOJ, 1401 H Street, N.W., Washington, D.C. 20530.

Dear Mr. Conrath: It is with deep concern that we write this letter regarding the Department of Justice's recent divestiture ruling on LBO's forced sale of Mt. Cranmore in North Conway, New Hampshire. Hopefully, you are aware of the history of Mt. Cranmore in the Mount Washington Valley. Not only is it of historic value, but the financial history in recent years has not been the best. We have skied the area for years and feel its impact in the Valley. This mountain cannot stand on its own. The comparison of Mt. Cranmore to the other areas is not an equal comparison. This mountain is a small intermediate mountain, that until Les Otten, was about to close. The package of including it with Attitash and Sunday River as a combo ticket and as an advertising program during the past year, has brought new life to the mountain and the valley.

We would greatly appreciate if you would reconsider your decision regarding this mountain. It needs the strong and knowledgeable leadership of LBO. Many of us who live in the Mass. and Rhode Island area would rather have the opportunities to ski a progressive area with a future than a discounted, old and perhaps closed mountain.

For the communities of the area and the skiers of New England please take a second look at this decision!!!

Thank you,

Fred and Milly Pereira,

392 Brenda Lane, Franklin, MA 02038 and Box 1054 Eidelweiss, NH 03849.s

Richard F. Hickey

July 11, 1996.

Mr. Craig Conrath, Chief,

Merger Task Force, Antitrust Division, U.S. Departments of Justice, 1401 H Street N.W., Washington, D.C. 20530.

Dear Mr. Conrath, I own a home in Bartlett, New Hampshire and ski in the Mount Washington Valley nearly every winter weekend and have done so for the past six years. I am concerned over the Department's decision to permit the merger of Leslie Otten's operations with those of Ski Ltd. only if the Mt. Cranmore and Waterville Valley ski areas are divested. I don't see how this will improve competition, such as it might exist in the ski industry. My concern is that divestiture will be soon followed by the collapse of both divestees resulting in fewer job opportunities in the region and fewer reasons why people would come here to spend their dollars and improve the economy.

I have no interest, financial or otherwise in Mr. Otten's operations or in Ski, Ltd. I regularly ski at Wildcat Mountain and ski at Cranmore and Attitash/Bear Peak infrequently. My observations and opinions are only those of a part-time resident of the area and as a citizen concerned with the financial well-being of the area's residents who do not have a wealth of job opportunities.

It seems to me that ski areas in Northern New England compete not only with each other but also with resorts closer to Massachusetts and Connecticut and with ski areas in New York. Most avid New England skiers also ski in the Rockies, many on an annual basis. New England areas surely lose some local business to the Western ski areas and get very little business from foreign skiers. (If you have ever skied in Colorado, you surely noticed the large numbers of skiers from all over the world who regularly take their ski vacations in the Rockies).

Ski areas not only compete with one another but with other attractions for the leisure dollar. Ski areas visits are declining, not growing. Within the Mount Washington Valley area, the downhill ski areas must compete with far less expensive cross-country skiing, ice climbing, trekking, snowmobiling, etc. It seems to me that the department may be overlooking these claims on the tourist dollar when it tries to define competition. Downhill skiing is just one winter activity in search of the available leisure expenditure.

Most New England areas, certainly Cranmore and Waterville Valley, are small and find it difficult to invest in the essentials of modern skiing—high speed lifts and technologically advanced snow making equipment. Likewise they are unable to mount significant advertising campaigns to attract patrons from near and far. Also, these small areas do not have the lodging and restaurant facilities that would add to their economic strength and which are expected by tourists today.

It seems to me that Les Otten was trying to create that economic mass necessary to lure tourists to the area and to expose the attractiveness of this region to non-skiers. He was offering his customers options to ski several different mountains on a convenient ticket system. He has been willing to support his own marketing concepts with his own money. An interesting by-product of his effort has been developing an awareness of the necessity of changing the way the ski business markets itself if it is going to continue to compete for the consumer's leisure dollar.

The ski business brings business to this region which needs employment opportunities for its residents. Needless to say, more visitors to the Valley improve the economy for all the local enterprises. Les Otten purchased Cranmore when, I believe, it was all but bankrupt. He invested a lot of money in improving its equipment and facilities. I can't imagine that in this day and age there is someone who can run that mountain profitably as a stand-alone facility.

The Mount Washington Valley has already lost some of its appeal to families with the bankruptcy of Black Mountain. If Cranmore also fails, it will take with it thousands of annual skier visits. Its passing would be another reason why people don't have to come here in the wintertime. This areas is not a casual drive from Boston or Hartford. Maintaining the area's economic base requires convincing people that there's lots of great activities awaiting them at the end of a three, four, five or six hour drive.

I don't think the Department's decision really improves the consumer's competitive options in as much as it takes a very narrow view of the position of downhill skiing in the universe of competitors for the consumer dollar. It seems to me that the ski industry in this area and the economy of the Mount Washington Valley needs operations with financial muscle and creativity. I don't think they work in todays economy and I don't think the Department should continue to support an antiquated concept of competition within the industry.

Sincerely,

Richard F. Hickey,

9 Metacomment Road, Scituate, MA 02066.

cc: Hon. William Zeliff.

Miriam Regan

July 11, 1996.

Dear Ms. Bingaman: Please seriously consider the views of local residents of Mt. Cranmore re the divestiture order against L.B.O.

We see no threat to competition in the N.H. ski industry. Mt. Cranmore is a particularly historical mountain and employs hundreds of local residents, offers school children free skiing and is geographically convenient to the local town. SAVE Mt. Cranmore.

Miriam Regan,

Box 345, Intervale, NY 03845.

June 26, 1996.

Please reverse the decision re Mt. Cranmore in Kortle Conway. LBO has helped the economy of this tourist valley and this antitrust is a blow to all.

Miriam Regan.

Sally Hindson

July 11, 1996.

Craig W. Conrath,

Chief of Merger Task Force, Antitrust Division, US DOJ, 1401 H Street, N.W., Washington, D.C. 20530.

Dear Mr. Conrath: It is with deep concern that we write this letter regarding the Department of Justice's recent divestiture ruling on LBO's forced sale of Mt. Cranmore in North Conway, New Hampshire. Hopefully, you are aware of the history or Mt. Cranmore in Mount Washington Valley. Not only is it of historic value, but the financial history in recent years has not been the best. We have skied the area for years and feel its impact in the Valley. This mountain cannot stand on its own. The comparison of Mt. Cranmore to the other areas is not an equal comparison. This mountain is a small intermediate mountain, that until Les Otten, was about to close. The package of including it with Attitash and Sunday River as a combo ticket and as an advertising program during the past year, has brought new life to the mountain and the valley.

We would greatly appreciate if you would reconsider your decision regarding this mountain. It needs the strong and knowledgeable leadership of LBO. Many of us who live in the Mass. and Rhode Island area would rather have the opportunities to ski a progressive area with a future than a discounted old and perhaps closed mountain.

For the communities of the area and the skiers of New England please take a second look at this decision!!!

Thank you,

Sally Hindson.

Dennis J. Holland and Marcia A. Burchstead

July 12, 1996.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Washington, D.C. 20530.

Dear Mr. Conrath: Unlike many other letters you will be receiving on the matter of the divestiture of Mt. Cranmore by LBO, I am in *full support* of the action taken by you and other members of the Merger Task Force.

I am the past president of the Innitou Ski Club located in Glen, NH and since January 1993 a homeowner, property taxpayer and voter in the town of Bartlett, NH. I along with the other members of the ski club was opposed to Les Otten's purchase of Mt. Cranmore last year.

Mt. Cranmore is a ski area full of history and heritage to the area. It is a *family* ski area and has served the needs of the Mount Washington Valley residents and school children since it opened in 1938. Hannes Schneider, Carroll Reed, Harvey Dow Gibson and others made this ski area a landmark among ski areas in the United States. I am afraid they would not be so proud of their mountain if they could see what has happened all in the name of progress.

Prior to LBO purchasing the mountain, previous owners had dismantled the Skimobile, a unique lift and a part of skiing history. A modern base lodge was erected in place of the log structure.

Last year LBO saw fit to take down the mid-station double chair and replace it with a high-speed detachable quad. *He also hiked the price of lift tickets to $10, for both weekday and weekend tickets!* Quite a jump for families to absorb. Discount vouchers for ski club members were eliminated His public relations flack said and I quote, ''*Discount lift tickets are not in our vocabulary!*'' What arrogance! The long standing, tradition of the ''Mountain Meisters,'' racing program for adults in the valley was also to be eliminated but this caused such an uproar that it was quickly restored. The cost of the ski program for area school children was also increased depriving some of the experience of learning a new sport and getting exercise. The children's ski school eliminated its practice of photo id tags and security cards for parents to pick-up children at the end of the day.

The previous year while under bank ownership, Mr. Ken Lydecker, managed the area and brought renewed goodwill to the valley. He donated and installed beautiful holiday wreath decorations to downtown North Conway, hosted the NCAA national cross country races at the mountain when nearby Jackson Ski Touring was flooded out and the races almost had to be canceled, and provided artificial snow for the snowmobilers ride-in in the valley which would have been a bust due to a lack of natural snow.

This is the kind of ski area Mt. Washington Valley needs and deserves, not a cookie cutter, mass produced, clone of Sunday River.

I know that several individuals have stepped forward and expressed an interest in operating Mt. Cranmore. I hope that your agency will give them the opportunity to restore Mt. Cranmore to the adults and children of the valley and the skiers who come from throughout New England to experience affordable family skiing.

Sincerely,

Dennis J. Holland and Marcia A. Burchstead,

35 Skyline Drive, P.O. Box 826, Intervale, NH, 03845.

July 13, 1996.

George J.R. Sauer

Dear Mr. Conrath: I am a property owner at #17 Old Bartlett Road directly across from Mt. Cranmore Ski Area.

I am very upset by your divestiture order which forces Les Otten to sell Mt. Cranmore. He is welcomed and needed by the community.

Please reconsider your decision.

Sincerely yours,

George J.R. Sauer,

45 Fuller St., Dedham, MA 02026.

John C. Conniff

July 13, 1996.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 4000, Washington, DC 20530

Re: Ski Resort Merger

Dear Mr. Conrath: I am a retired businessman and an active skier for sixty years. I skied at Mt. Cranmore, NH in the early days of American skiing, and I still ski there today.

Please, I urge you to allow the American Skiing Company to retain ownership of Mt. Cranmore. This would be in the best interest of the Town of North Conway, the many commercial establishments that depend on a *successful* ski area, and most important we the skiing public in New England. This will not, in any way, lessen competition. Mt. Cranmore needs The American Skiing Company if it is to survive.

A few years ago the Mt. Cranmore Ski Area went into bankruptcy. The ski company struggled for a long time and the facilities on the mountain were run-down and obsolete. The management was in no position to borrow the large amount of money it would take to modernize the mountain. When LBO Enterprises purchased Mt. Cranmore everyone cheered. Here was a company with skilled management and the financial strength to put this modest size ski area back on its feet. In just two or three years they invested in new equipment, offered the public attractive programs, and started to turn things around.

I am asking that you reconsider your decision about Mt. Cranmore and allow the American Skiing Company to retain ownership. This will in fact be good for competition, everyone in the Town of North Conway, and we skiers.

You may call me anytime if you think I can be of assistance in helping you with your final decision.

Sincerely,

John C. Conniff,

(413) 567–8767.

Charles Morse, Jr.

July 16, 1996

Mr. Craig W. Conrath,

Chief of Merger Task Force

Subject: D.O.J. divestiture order relative to LBO Cranmore Ski Area

Gentlemen: I respectfully request that you reconsider your actions in ordering LBO Enterprises to divest of the Cranmore Ski Area. As a senior citizen pass holder, my pass allowed me to ski at either Attitash Bear Peak or Cranmore, since both are owned by LBO.

The opportunity to choose makes it possible for me to enjoy the best conditions of the day. North facing Attitash may be uncomfortable on a cold windy day, but the alternative, Cranmore with its southern exposure can be a better choice. Conversely, on a warm sunny day Attitash becomes the mountain of choice. Should these two areas become owned by separate entities, I would no longer have the luxury of choice and thus, my skiing pleasure would be damaged.

It should also be noted that LBO has done an outstanding job of upgrading Cranmore's facilities and has consistently produced outstanding snow conditions.

Apparently, the D.O.J. is concerned that LBO holdings will lessen competition resulting in higher ski ticket pricing. In the Mt. Washington Valley Area, there are six ski areas, Wild Cat, Black Mtn, Shawnee Peak, Bretton Woods, Attitash and Cranmore. It would seem that the existence of four independent competitors, within a few miles of the subject areas, would exert pricing pressure which would keep LBO area prices competitive.

I respectfully ask your reconsideration of your position and allow Cranmore to remain a part of LBO Enterprises subject to your review another year.

Sincerely,

Charles Morse, Jr.,

19 Green St., Newbury, Mass. 01951.

McLane, Graf, Raulerson & Middleton, Professional Association

July 16, 1996.

Anne K. Bingaman,

Asst. Atty. General, Antitrust Division, U.S. Department of Justice, Constitution Avenue, NW., Washington, DC 20530

Dear Ms. Bingaman: I am writing to you with respect to the recent newspaper articles that the Justice Department has required, as a condition for acquisition of SKI Limited, that LBO sell its interests in Mt. Cranmore in North Conway and Waterville Valley in Campton, New Hampshire.

As a matter of introduction, please understand that for over thirty (30) years, I served as General Counsel and as a Director of Mt. Attitash Lift Corporation in Bartlett, New Hampshire. In July, 1994, LBO acquired the stock of Mt. Attitash. Since that time, the acquirer has constructed two lifts and constructed several new trails at Attitash. This represents the first substantial capital investment in Attitash, and in any Mount Washington ski area, in many years.

As someone who was vitally involved on a daily basis in the ski industry over years, I understand that industry far better than anyone from Washington, DC, no matter how well intentioned or well-educated that person may be. I can tell you that as a Director and officer of Attitash, it was a challenging task to keep that operation out of the hands of the Bankruptcy Courts. We struggled, and struggled, and struggled for years to survive. From time to time, we made capital improvements and through good management, we were able to survive. At the time that we sold our operation to LBO, there was no other buyer on the horizon. We sold the property for what we believed was a fair consideration for our shareholders.

As a purchaser, Mr. Otten and his corporation were under no obligation to make any improvements at any particular time. We were extremely pleased to see that in the first six months of his ownership, he installed a quad-chairlift and constructed three new trails. During the second twelve months of his ownership, Mr. Otten installed a high-speed quad, three additional chairs, and a 10,000 sq. foot base building, parking area, etc. All of this was done in a first-class manner.

The beneficiaries of these investments are not just the people who ski in that area, but the entire population of that area. Suddenly, people began to spruce up their motels and restaurants, invest funds in those facilities, all in anticipation of the additional passenger traffic that these investments would undoubtedly generate. I don't think anyone has been disappointed in these investments, at least until now. In the summer of 1995, Mr. Otten acquired Mt. Cranmore in North Conway. This was a facility which was one of the very first major ski areas in the United States. Unfortunately, the ski area had long since lost its attractiveness to the skiing public and had fallen on very bad times. For the past several years, the ski area has been operated by Bay Bank, which received a deed in lieu of foreclosure from its last owners.

Similar to the experience at Attitash, Mr. Otten and his corporation not only acquired the area, but immediately installed a high-speed quad, made other improvements in the area, and began to breathe life into what many believed to be a fatally ill ski area. I can tell you as someone who lives in the Mount Washington Valley and knows many individuals in that area, that this effort by Mr. Otten was the most significant step in many, many years. New Hampshire was extremely hard-hit by the recession of the late '80s. The area most hard-hit was the real estate market and I believe the most hard-hit geographical area was northern New Hampshire. Suddenly, Les Otten came to town and started to invest in an area that everyone else thought was fatally ill, if not dead. This was an extremely important move psychologically.

As an attorney, I do not understand the position of the Justice Department, but I am not well enough acquainted with the intricacies of these issues to begin to comprehend the problems anticipated. All I can tell you is that there are four major areas in the Mount Washington Valley of New Hampshire, namely, Attitash, Black Mountain, Cranmore and Wildcat. In addition, there is King Pine Ski Area some 15 miles south. For a single operator to operate both Cranmore and Attitash makes a lot of sense and provides an economy of scale which makes this operation profitable. Standing alone, Cranmore has not been able to make a profit or even survive.

The decision to require Mr. Otten and his corporation to jettison Cranmore is simply a very bad decision, both from the point of view of ski area operations and the point of view of the community. The community desperately needs Les Otten to own and operate Cranmore. Anything that could be done in this regard to assure that that will continue to happen will be of great benefit to this portion of the State of New Hampshire.

I would be more than pleased to answer any questions or supply any specific information that you require.

Thank you very much for your kind cooperation.

Sincerely yours,

Jack B. Middleton.

cc: The Honorable Charles F. Bass, M.C., The Honorable William H. Zeliff, Jr., Senator Judd Gregg, Senator Robert C. Smith

Robert & Kim Adair

July 16, 1996.

Craig W. Conrath,

Chief, Merger Task Force, U.S. Department of Justice—Anti-Trust Division, 1401 H Street NW., Washington, D.C. 20530

Re: Ski Area Merger

Dear Mr. Conrath: I am writing in strong opposition to the Justice Department's recent decision to require The American Skiing Company (merger of LBO Holdings and SKI Limited) to divest two of its ski areas.

Cranmore has been a vital part of the Mt. Washington Valley's economic picture since the 1930s. In recent years, its financial status, and to some degree, that of the Valley, has been strained. Since LBO's acquisition of Cranmore in the summer of 1995, significant improvements have been made to the resort, including installation of a badly-needed high speed quad chairlift. As a result, the Mt. Washington Valley as a whole has benefited from these improvements.

LBO operated both Cranmore and Attitash/Bear Peak last winter and offered fairly priced tickets that were interchangeable at both mountains. The flexibility of being able to ski at two characteristically different ski areas offered skiers an excellent choice given the variable weather and snow conditions typical of New England. The joining of these two mountains created a stronger, better ski environment for locals and visitors alike. Many people, including myself, bought tickets which were valid for a two year period. The value of unused tickets has been diminished by your decision.

The Department of Justice's claim that the LBO/SKI merger would diminish competition is absurd, and hints of a decision made by bureaucrats unfamiliar with our local area and the ski industry in general. Ski area competition in the Mt. Washington Valley is very healthy and currently consists of King Pine, Shawnee Peak, and Black Mountain, all comparable in size to Cranmore; and Loon, Cannon, Wildcat, and Bretton Woods, which are comparable to Attitash/Bear Peak. The potential of higher prices as a result of this merger is clouded by one simple fact—if prices are too high, people will ski elsewhere. The quality and commitment LBO has made to producing the best ski conditions is the reason no one wants them forced out.

Please reverse your decision regarding this merger. The community has a much better handle on the value of LBO's ownership of Cranmore—we live here and can understand and appreciate what this organization has contributed to our area. Please don't ruin this for us.

Sincerely,

Robert E. Adair.

William D. Quinn

July 18, 1996.

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Dept. of Justice, 1401 H Street NW., Washington, D.C. 20530

Re: Consent Decree Les Otten/LBO

Dear Sir: Your actions with regard to the above noted decree is without a doubt the single best option in this case. Les Otten is no less a preditor than Bill Gates, with concerns only for profit, not for the quality of life. Your action will help maintain the quality of life here, in particular, the blocking of the continuing downward trend of wages brought on when one company controls the region. Stick by your decision and do not let political parasites like Zeliff, Gregg and Smith turn a great decision from good to bad.

Very truly yours,

William D. Quinn,

P.O. Box 21, Madison, N.H. 03849.

Alvin J. Coleman & Son, Inc.

July 18, 1996.

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H St., N.W., Washington, D.C. 20530

Dear Mr. Conrath: As a businessman located in the Mount Washington Valley, I want to express my disappointment in the Department of Justice' ruling concerning the divestiture of Mount Cranmore from the American Skiing Company (formerly LBO Enterprises).

The economy in the Valley has been very sluggish, to say the least, in the past several years. We were all very excited about LBO's plans for Mount Cranmore and were anticipating renewed growth in the region. The decision by the Department of Justice is a hard blow to an area which depends so heavily on year round tourism.

I urge you to reconsider the recent ruling and take into consideration the impact on our local economy on the sale of an entity which up until very recently has been struggling financially for years.

Please feel free to call, if you would like to discuss this matter.

Sincerely,

Calvin J. Coleman,

President.

cc: William H. Zeliff.

Tech Works

July 16, 1996.

John W. Van Lonkhuyzen,

Attorney, U.S. Dept. of Justice, City Center Bldg.—Room 4000, 1401 H Street NW, Washington, DC 20530

Re: U.S. v. American Skiing Co. & S–K–I, Ltd. (C.A. No. 96–1308)

Dear Mr. Van Lonkhuyzen: Thanks for all your time in our phone conversation last week, and thanks for your letter of July 12, 1996, including the enclosures on HHI and DOJ's 4/2/92 ''Horizontal Merger Guidelines''. They should be very helpful in understanding Justice's position on this matter.

For your information, I have enclosed my letter dated June 30, 1996 to Mr. Conrath. I imagine you would have seen this eventually, but I wanted you to have a copy now in case we have further conversations.

My letter was written before I had fully thought through the *pro*-competitive aspects of this merger. As we discussed on Friday, ASC's ability to draw from a much wider area by reason of offerings including Cranmore along with its sister slopes, holds the possibility of huge savings for the company. More skiers during mid-week could do a lot to hold down prices for skiers of all types (day, weekend and week long) from all locations. It is a potential that may be *unique* to ASC (LBO) due to its ownership of other nearby slopes. I'm not sure Justice properly focused on this aspect.

As you know, the Town of Conway has formed a committee to respond to what has transpired. I believe that committee will expand upon this and other matters of concern.

Yours truly,

David S. Urey,

cc: D.M. Laws.

Maryellen Maguire LaRoche

July 23, 1996.

Craig Conrath,

Chief, Merger Task Force: Anti-Trust Division, US Department of Justice, 1401 H Street, NW., Washington, DC 20530.

Dear Mr. Conrath: I am a resident of Conway, NH and this letter is in response to the US Department of Justice recent decision regarding the American Skiing Company's acquisition of SKI Limited. I am also an avid skier for over 30 years and a condominium owner at Sunday River Ski Resort in Newry, Maine, a property built and managed by LBO (nka American Skiing Company).

I am in full agreement with the Justice Department decision regarding the American Skiing Company acquisition. It is my understanding that the decision regarding the sale of Waterville Valley and Cranmore Mountain was developed by LBO to meet Justice Department concerns regarding antitrust. Cranmore is essentially LBO's weak resort, purchased a year ago at a bargain basement price, and was not a great sacrifice in terms of market share control and the profit potential of the larger deal which was completed as scheduled. The American Skiing Company could have chosen another ski area, it was their option to offer the sale of Cranmore. Antitrust issues continue to be an area of great concern, as well as the tremendous debt ratio absorbed by the American Skiing Company to acquire these other large ski areas in a volatile, weather dependent, and often low profit margin industry. Ski areas drive the winter economy of Northern New England and many of the acquired ski areas have demonstrated major commitments to their communities economic health and have also developed year round operations. It remains to be seen if the American Skiing Company will be as committed to the economic development of these communities as their previous owners demonstrated. Their short attention span regarding Cranmore is not a good example of a commitment to the Conway community.

The amazing piece of this puzzle is the local press campaign slamming the Justice Department for doing its job. It is well known by skiers and owners at Sunday River Resort that LBO's major goal is to control the New England market share, control ticket prices and eliminate discounting. All other claims, such as potential lower ticket prices due to economies of scale, are typical LBO marketing hype. Just listen to their ski reports: LBO resorts always have 6 more inches of snow than your house at the base of the mountain; its amazing how brazen a company they are in terms of marketing hype. LBO only discounts when their competition is discounting and impacting their skier visits and profit margin. Thank you for preventing an LBO takeover of New Hampshire ski resorts. You were right on target. I sincerely hope you will continue to monitor the development of the American Skiing Company.

Sincerely,

Maryellen LaRoche.

Locust Hill

July 25, 1996

Craig W. Conrath,

Chief of Merger Task Force, Antitrust Division, US Dept. of Justice, 1401 H Street NW., Washington, DC 20530

Dear Mr. Conrath: I am writing in support of the continued ownership of Mount Cranmore by Less Otten and LOB. Cranmore is an important part of Conway's economic mix. It is the center point of our winter business. As a tourist attraction it can be, as it has been in past years, a major destination for our *summer* and winter visitors.

Cranmore is, in the scheme of ski areas, a small area. It has a limited base of skiers; families and beginning skiers. But along with Attitash, it becomes part of a very attractive package. The economics of a small area these days is not a rosy picture. With high insurance costs, demands for bigger and better snowmaking, and the costs of adverting, economics of scale can make an area a viable business.

Cranmore has not had responsible management for many years and has twice been on the brink of bankruptcy. Now, with an owner who is a solid business man *and* understands skiing and the skier, Cranmore finally has a chance to thrive.

The pricing of tickets, according to the papers, seems to be your main concern. The money spent on tickets is discretionary money. If people feel that the cost of tickets is too high they will not buy them. A business needs purchasers of it's services in order to survive. If people stop buying tickets LOB would have to lower the ticket costs to lure the skier back.

Please leave along what appears to many in the town to be a situation which benefits not only Conway but the entire Mount Washington Valley.

Sincerely,

Cynthia B. Briggs,

Selectman, Town of Conway 1989–1995, Planning Board, Town of Conway, 1995–1999, School Board, Town of Conway 1975–1981, Budget Committee, Town of Conway.

copies: Phil Gravink, Pres. Attitash, William Zeliff, U.S. Rep., Judd Greg, U.S. Senator, Robert Smith, U.S. Senator.

James H. Hastings

July 31, 1996.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H. Street NW, Washington, D.C. 20530

Re: Mt. Cranmore, Conway N.H.

Dear Mr. Conrath: As a resident of Massachusetts and one who skies frequently in the North Conway area, I am submitting my coments regarding the proposed divestiture of Mt. Cranmore. Unlike other areas in the Country, North Conway has many ski areas in the vicinity, all with ownership other than the one currently owning Mt. Cranmore and Attitash. Within a one hour drive the following independent ski areas are located: Bretton Woods, Cannon. Black, Wildcat and King Pine. Additionally, skiers from eastern Massachusetts have the option of travelling to the Route 93 side of New Hampshire, eastern Maine or Vermont. This type of competition does not, in my mind create a monopoly. What is clear however, is that operating a ski area takes management expertise and capital, both of which have been evident since the current ownership purchased Mt. Cranmore.

During the winter of 1995–1996, I skied at Mt. Cranmore and was very pleased with the changes incorporated. These changes made Mt. Cranmore a pleasant place to ski, and more importantly contributed to the economy of North Conway.

My concern is that if Mt. Cranmore is forced to be sold to less experienced or less capitalized ownership, the mountain and the town, would suffer. I ask that you seriously consider alternatives to forcing divesture of Mt. Cranmore.

Very truly your,

James H. Hastings,

55 Stetson Street, Bradford, Massachusetts 01835.

John B. Pepper

Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, Washington, DC 20530

Re: Cranmore Mountain Ski Area, North Conway, NH

Dear Sir: Our family learned with great concern of the consent decree to which LBO Enterprises was forced to agree in order to accomplish the merger with S.K.I. Ltd. requiring the divestiture of Cranmore and Waterville Valley.

We are not as familiar with the Waterville situation as to whether it is possible for this area to be successful on its own or under some other ownership.

We are very familiar with the Cranmore situation and have very serious doubts that it can be successful without continuing the enlightened management of LBO.

This area was on the verge of being unable to continue in business and might well have gone the way of other small ski areas in our area had not Les Otten come to the rescue with new management and capital to rescue it from the brink.

It is not only capital that is required for a successful operation of a ski area but also enlightened management and that type of management is exactly what LBO brought to this area that had been slowly dying over the last several years.

LBO also brought leadership in the important vacation industry which is so important to New Hampshire but also financial strength and marketing skills that are so much more successful when combined with several other regional ski businesses.

The whole thrust of LBO marketing has been to bring more vacationers to New England not only from the U.S. but also from Europe.

There is no lack of other competition in Northern New England so that any concern about the public suffering from multiple ownership of areas is unfounded. Even in Mount Washington Valley this competition exists but all local business is convinced that LBO will benefit all business in the valley—even other ski areas not under LBO ownership.

We emplore that you reexamine this unfair conclusion of the Justice Department. We ask that every consideration be given to reversing this decision involving Cranmore Mountain.

Sincerely,

John B. Pepper,

Alice W. Pepper.

Prescilla A. Morse

July 16, 1996.

Subject: D.O.J. divestiture order relative to LBO Cranmore Ski Area

Gentleman: I respectfully request that you reconsider your actions in ordering LBO Enterprises to divest of the Cranmore Ski Area. As a senior citizen pass holder, my pass allowed me to ski at either Attitash Bear Peak or Cranmore, since both are owned by LBO.

The opportunity to choose makes it possible for me to enjoy the best conditions of the day. North facing Attitash may be uncomfortable on a cold windy day, but the alternative, Cranmore with its southern exposure can be a better choice. Conversely, on a warm sunny day Attitash becomes the mountain of choice. Should these two areas become owned by separate entities, I would no longer have the luxury of choice and thus, my skiing pleasure would be damaged.

It should also be noted that LBO has done an outstanding job of upgrading Cranmore's facilities and has consistently produced outstanding snow conditions.

Apparently, the D.O.J. is concerned that LBO holdings will lessen competition resulting in higher ski ticket pricing. In the Mt. Washington Valley Area, there are six ski areas, Wild Cat, Black Mtn, Shawnee Peak, Bretton Woods, Attitiash and Cranmore. It would seem that the existence of four independent competitors, within a few miles of the subject areas, would exert pricing pressure which would keep LBO area prices competitive.

I respectfully ask your reconsideration of your position and allow Cranmore to remain a part of LBO Enterprises subject to your review another year.

Sincerely,

Priscilla A. Morse,

19 Green St., Newbury, MA 01951.

Mr. Peter B. Edwards

August 1, 1996.

Mr. Craig W. Conrath,

Chief—Merger Task Force, Anti-Trust Division, US Dept. of Justice, 1401 H St. NW., Washington, D.C. 20530

Re: LBO Holdings, Inc./Ski, Ltd.

Dear Mr. Conrath: I am writing in regards to the requirement by the Justice Dept. that LBO Holdings divest itself of Mt. Cranmore. As a skier and consumer of the skier services that LBO provides in the Mt. Washington Valley. I am firmly in opposition to the divestiture requirement. I believe this opinion is shared by many other skiers both in the valley, and outside.

LBO Holdings has been a skier's friend. They invest in the mountains they run and provide a quality skiing experience. One need only to observe what has happened at Mt. Cranmore in the year since LBO has owned the business. They improved the mountain tremendously and lift prices have not increased out of line with other areas.

It is my understanding that the anti-trust activities of the Justice Department are to protect the consumer or other parties from unfair competition. There is still plenty of competition in the Mt. Washington Valley. There are 6 ski areas within a 20 mile radius of North Conway. LBO owns only 2 of these. Additionally, LBO has not exhibited any kind of predatory pricing practices. What is good for one ski area in terms of traffic has benefits for other neighboring ski areas.

I would be pleased to testify in this matter in support of the effort to drop the Mt. Cranmore divestiture. Thank you for your consideration.

Yours truly,

Peter B. Edwards

Glass Graphics, Inc.

August 1, 1996.

Mr. Craig W. Conrath,

Chief—Merger Task Force, Anti-Trust Division, US Dept. of Justice, 1401 H St. NW, Washington, D.C. 20530

Dear Mr. Conrath: Please add my name to the list of those businesses in the Mt. Washington Valley who strongly oppose the requirement that LBO Holdings sell Mt. Cranmore in order to complete the merger with Ski, Ltd.

This makes absolutely no sense to me. LBO is hardly the kind of business which the Anti-Trust regulations were meant to deal with. Les Otten and his company have been a friend of consumers and competitors alike.

He has invested heavily in Mt. Cranmore and this has benefitted all the ski areas by bringing in more skiers to the Mt. Washington Valley. Just ask them.

I would urge you to hold local hearings on this matter to hear from consumers and competitors. The overwhelming opinion will be in favor of allowing LBO to retain Mt. Cranmore.

Yours truly,

David Peterson,

Pres.

Miriam L. Regan

Craig W. Conrath,
Merger Task Force, Antitrust Div.

Dear Sir: Please use your influence to reverse the decision on the divestiture of Cranmore in No. Conway, N.H.

The accessible location of the ski area to the town is exceptional and all important to our local economy.

Sincerely,

Miriam L. Regan

Pam and Bob Fisher

3 August, 96.

Dear Craig Conrath: Grateful for your prompt reply to my earlier letter and sympathetic with the flood of mail you are doubtless receiving, I shall be brief. It is the economy of scale which enables Les Otten to continue to provide quality skiing at the lowest possible price. This we well know as 70+ skiers who can afford to ski the Cranmore-Attitash-Bear P complex economically. Having skied-raced-coached in this valley since the '40s, both my wife and I, our children, and our grandchildren are intensely aware of the roller-coaster character of ski area finances and how they impact consumer quality experience. It is our non-expert opinion that ''keeping Cranmore under the American Skiing Company's umbrella (will best) protect and bolster the Valley's tourism dependent economy.'' Again, thank you for attending.

Sincerely,

Pam & Bob Fisher,

615 Potter Road, Center Conway, NH 03813.

Christopher J. Cote

July 29, 1996.

Craig W. Conrath,
Chief of Merger Task Force, Antitrust Division, US DOJ, 1401 H Street, NW., Washington, DC 20530

Dear Mr. Conrath: It is with deep concern that we write this letter regarding the Department of Justice's recent divestiture ruling on LBO's forced sale of Mt. Cranmore in North Conway, New Hampshire. Hopefully, you are aware of the history of Mt. Cranmore in the Mount Washington Valley. Not only is it of historic value, but the financial history in recent years has not been the best. We have skied the area for years and feel its impact in the Valley. This mountain cannot stand on its own. The comparison of Mt. Cranmore to the other areas is not an equal comparison. This mountain is a small intermediate mountain that, until Les Otten, was about to close. The package of including it with Attitash and Sunday River as a combo ticket and as an advertising program during the past year, has brought new life to the mountain and the valley.

We would greatly appreciate it if you would reconsider your decision regarding this mountain. It needs the strong and knowledgeable leadership of LBO. Many of us who live in the Massachusetts and Rhode Island area would rather have the opportunities to ski a progressive area with a future than a discounted, old and perhaps closed mountain.

For the communities of the area and the skiers of New England, please take a second look at this decision!!!

Thank you,

Christopher J. Cote,

29 Essex Street, Lowell, MA 01850.

Ronald F. Cote

July 29, 1996.

Craig W. Conrath,
Chief of Merger Task Force, Antitrust Division, US DOJ, 1401 H Street, N.W., Washington, DC 20530

Dear Mr. Conrath: It is with deep concern that we write this letter regarding the Department of Justice's recent divestiture ruling on LBO's forced sale of Mt. Cranmore in North Conway, New Hampshire. Hopefully, you are aware of the history of Mt. Cranmore in the Mount Washington Valley. Not only is it of historic value, but the financial history in recent years has not been the best. We have skied the area for years and feel its impact in the Valley. This mountain cannot stand on its own. The comparison of Mt. Cranmore to the other areas is not an equal comparison. This mountain is a small intermediate mountain that, until Les Otten, was about to close. The package of including it with Attitash and Sunday River as a combo ticket and as an advertising program during the past year, has brought new life to the mountain and the valley.

We would greatly appreciate it if you would reconsider your decision regarding this mountain. It needs the strong and knowledgeable leadership of LBO. Many of us who live in the Massachusetts and Rhode Island area would rather have the opportunities to ski a progressive area with a future than a discounted, old and perhaps closed mountain.

For the communities of the area and the skiers of New England, please take a second look at this decision!!!

Thank you,

Ronald F. Cote,

Joyce A. Cote, 29 Essex Street, Lowell, MA 01850 & 31 Conway Road, Madison, NH.

Maine Turf Co.

August 6, 1996.

Craig W. Conrath,
Chief, Merger Task Force, Antitrust Division, US. Department of Justice, 1401 H Street NW., Washington, DC 20530

Dear Mr. Conrath: I am writing to express my disbelief and concern over the ruling from the Justice Department forcing Mr. Otten to sell-off Cranmore. I thought the Anti-Trust laws were no longer in effect. It is difficult to understand why Otten's small portion of the ski market is a threat to our free market economy when so many companies control much larger portions in the market place. I speak from experience; I raise potatoes for the potato chip market. One of my past customers is the Frito-Lay Corporation; a subsidiary of PepsiCo. In the mid eighties the Frito buyer communicated the company's market strategy. He said Frito-Lay will *stabilize* the chip industry. I asked what that meant. The buyer divulged a plan to control the potato chip market. First large plants were being built to reduce unit cost. Second, the better growers (farmers) will be instructed to sell potatoes exclusively to Frito-Lay. Finally, any amount of money would be spent to buy store space and run promotions to apply financial pressure against smaller manufacturers. Frito wanted my operation to be a part of their *team*. That meant I would no longer sell to other manufacturers.

That's wrong and I stopped doing business with Frito-Lay. Today, Frito-Lay controls at least 60% of the national market. Most of their competition is no longer in business. A visit to our local Shop & Save is proof; the chip isle is dominated by Frito products and they still pay extra for end displays even though they have little competition. Their plan worked.

This is why I find it absurd that the Justice Department is going after Mr. Otten while looking the other way as large corporations forage at will. Otten invested in vital improvements and upgraded management at Cranmore. These improvements are a great benefit to the whole community. I don't understand the logic of this order to divest.

Respectfully,

Douglas C. Albert,

President, Albert Farms/Maine Turf Company.

Locust Hill

August 5, 1996.

Craig W. Conrath,
Chief of Merger Task Force, Antitrust Div., U.S. Dept. of Justice, 1401 H Street NW., Washington, D.C. 20530

Re: Mt. Cranmore and LBO merger

Dear Mr. Conrath: I strongly support the continued ownership of Mt. Cranmore by LBO Inc.

I have owned and operated two tourist businesses in North Conway over the past 40 years, owning each for 20 years. Until 1975, about 50% of our business was ski oriented. Since 1975, our winter tourist business has steadily eroded—as the fiscal stability of Mt. Cranmore has weakened.

With the purchase of Mt. Cranmore by LBO last year, North Conway has been given new hope for its winter season in the future.

Many (most?) ski areas are marginal business enterprises at best. Please leave us with one of the few successful operators—Les Otten.

Sincerely,

Conrad Briggs,

Past President; North Conway Chamber of Commerce, Past President; Eastern Slope Ski Club.

c. Phil Gravink

Hurricane Mtn. Farmhouse

5 August 1996

Mr. Craig W. Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street NW., Washington, D.C. 20530

Dear Mr. Conrath: I applaud the willingness of the Division to gather additional information on the Mount Cranmore divestiture order and have some hope that this will lead to a reconsideration. My interest is that of a citizen who has lived summers and now permanently within a mile of these slopes more than a decade before they were purchased by Harvey Gibson. Cranmore is woven into the history and present life of this Valley.

To date I have not seen a statement from your office that explains why the action was required prior to approving the merger sought by Mr. Otten. Do the data collected and analyzed support a conclusion that Otten's share of the skiing market will produce higher ticket prices? Does the analysis include the discretionary nature of consumer spending for a recreational activity carried forward under highly unpredictable and perishable conditions? Does the Division consider skiing as an activity high enough in the order of consumer importance (i.e., compared to food, fuel, telephone, etc.) to make antitrust action necessary?

If Otten or American Skiing uses its 25% market share of New England downhill skiing to boost prices beyond consumer willingness to pay, there are many other slopes available in New England and even further distant. Cranmore will immediately show a reduction in ski runs. There can be no time for ''wait and see''; the snow must be sold before it melts. Not only that but downhill skiing already has lost its growth potential as other less expensive winter sports have developed.

Has the Division examined the financial statements of Cranmore for the last 10 years to determine its profitability? In how many years were its property taxes in arrears? Were the electric power bills paid on time? Was new and improved lift equipment installed? How ''good'' was the snowmaking? Can Cranmore stand alone as a ski operation or is it ''assisted'' by being tied to another operation such as Attitash thus achieving economies? Isn't there an advantage in one company marketing a Valley ski experience? Have the other Otten ski operations in Maine and Vermont been checked for the kind of conspiracy in restraint of ski recreation that the Division seems to anticipate?

I suggest the Division take a ''second look'' and give greater attention to the fragility of downhill ski resorts and of their impact on the economic and social life of a mountain area not especially known for its great wealth. The capital and business that Otten has brought and will bring here can be felt by all residing in the Valley.

Faithfully

Richard A. Ware

Stephen P. Camuso

July 5, 1996.

Craig W. Conrath,

Chief of Merger Task Force, Antitrust Division—US DOJ, 1401 H Street NW., Washington, DC 20530

Dear Mr. Conrath: I am writing concerning the recent action taken on the acquisition of Cranmore Mountain in No. Conway, New Hampshire by LBO. As a visitor to the Mt. Washington Valley area since 1959 and a landowner since 1981, I am very much concerned about LBO having to divest themselves of the Mt. Cranmore property.

Since 1959, we have found skiing to be a great family sport and one that is generally carried on by the next generation with their families, Such is the case of both my wife and I and now our children. We invested in a vacation home in the Valley because of its proximity to our Boston area home and the ''family theme'' and layout of Mt. Cranmore. In the years that we have skied exclusively at Mt. Cranmore there have been three owners before LBO purchased the property in 1995. Initially, each owner enthusiastically moved forward with new projects to better the area only to run out of money after a few years and allow the property to decline over time until a new owner could be found.

It's apparent that the area will only survive with an owner who can afford the ups and downs of such a seasonable business. Many of us who have supported Mt. Cranmore through these ups and downs realize this and were excited with the LBO takeover. They immediately went back to basics and invested in such needed things as a new septic system for the top of the mountain which allowed for the reopening of the restaurant and bathroom facilities—something the previous three owners had failed to do. They immediately installed a new detachable quad chair which made the mountain accessible for evening meals and use in the summer. What we saw was a real commitment to bring Mt. Cranmore up to the standards of the other LBO properties.

We find that each ski property has it's own attraction. For example, in the 37 years that our family has been skiing in the Mt. Washington Valley, we have only visited the other mountains a handful of time. One mountain is no threat to another and the strength of the whole valley is based on the success of all the mountains. We are all aware of the risk involved in the ski business. A firm the size of LBO is able to minimize this risk which can only be a benefit to those living and working in the Valley as well as the property values of second home owners who have invested in the area. We look forward with enthusiasm to LBO's continued investment in Mt. Cranmore.

Sincerely,

Stephen P. Camuso,

14 Cranmore Circle, No. Conway, NH 03818.

Alfred C. Peters, D.M.D., M.S.W., C.A.C

Dear Mr. Conrath: I have skied, climbed, and lived in the Mt. Washington Valley for over ½ century. The environmental and economic integrity of this area is dependent on the viability of Mt. Cranmore, Mt. Attitash and Sunday River in Maine.

Mr. Otten is the one person who is capable of enchancing the well-being of our community by uniting these three areas for out common well-being.

Please ''Reverse the Decision.''

Sincerely,

Alfred C. Peters

National Federation of Independent Business

August 14, 1996

Mr. Craig Conrath

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Washington, DC 20530

Dear Mr. Conrath: NFIB is the largest small business advocacy organization in the nation representing over 600,000 small and independent business owners.

One of our members, Brain Hill of Intervale New Hampshire, has sent us information regarding the divestiture order pending against Les Otten of LBO Enterprises, Inc. If this order is carried out, many NFIB members in New Hampshire will be adversely affected. The profitability of their small businesses depend on the dollars spent by Les Otten to advertise and draw tourists to Cranmore and Waterville Valley.

On behalf of our members, we urge you to reverse your decision and cancel the order to divest.

Thank you for your attention to our comments.

Sincerely,

Joan M. Moeltner,

Membership Liaison.

cc: Brian Hill.

New Hampshire Electric Cooperative, Inc.

August 26, 1996.

Craig W. Conrath,

Chief, Merger Task Force, Anti Trust Division, US Dept. of Justice, 1401 H Street, N.W. Washington, D.C. 20530

Re: United States v. American Skiing Co. and S–K–I Limited, Civil Action No. 96–1308 TJP

Dear Mr. Conrath: I am writing you to express my strong concern over your required divestiture of Mt. Cranmore by LBO. I believe that your action will be detrimental to the citizens of the Mount Washington Valley, the members of New Hampshire Electric Cooperative, and the future of Mt. Cranmore.

New Hampshire Electric Cooperative is a member owned electric distribution utility serving about half the towns in the State of NH. We serve a number of ski areas including Mt. Cranmore, Waterville Valley, Loon Mt., Attitash, Tenney Mt., Highland Ski area, and Black Mountain. We have extensive experience dealing with troubled or bankrupt ski areas. We have served on the creditors committee for Tenney Mt. We have been chair of the creditors committees for Waterville Valley and Black Mountain. We also have followed closely the issues related to Mt. Cranmore's bankruptcy.

We were delighted when LBO (Now ASC) acquired Mt. Cranmore. They injected life into a small market Mountain. Their investments created jobs and opportunities to a ski area that was struggling. Our concern is that your divestiture requirement sets Cranmore floundering once again. Going back to the way things were just a few short years ago would be detrimental to business in the Valley, the employees of Cranmore, this Cooperative and the skiers of New Hampshire, Maine and New England.

Having been involved in the Black Mountain and Waterville bankruptcies I know that there are limited serious buyers for ski areas. There are fewer if any serious buyers with the financial means to be successful with a mountain the size of Cranmore. The fact is Cranmore was on the market for a long period of time before being purchased by LBO. I believe your action amounts to a death sentence for Cranmore. I question if a quality buyer will be found who will continue with the plans that have already been laid out for the mountain. In the long run this will have the opposite impact on competition from what you are trying to achieve. One less mountain to choose from.

I take exception with your justifications for this divestiture. You focus on the impact on skiers from the states of Maine, Massachusetts, Connecticut, and Rhode Island and ignore the impact on New Hampshire's skiers. You taut the specter of higher prices, but do not recognize that improved services and expanded facilities are the important aspects of the merger. You fail to understand that skiers do not make their decision on where to ski based on price alone. Ski area conditions, terrain, lift capacity, and amenities such as food, lodging, and shopping are all important factors.

In general, I question the need to divest at all, and especially the need to divest of two *New Hampshire* ski areas. There has to be another solution that satisfies your needs. I hope you will try to find that solution and I ask you to reconsider your actions and not require the divestiture of Mt. Cranmore.

Sincerely,

Fred C. Anderson,

General Manager/CEO.

cc: James Somerville, Conway Town Manager, PO Box 70, Center Conway, NH 03813.

Ronald Barber

August 28, 1996.

Mr. Craig W. Conrath,

US. Dept. of Justice, Washington, DC 20503

Dear Sir: I am taking advantage of the extension of the Public comment period to write the D.O.J. in opposition to its divestiture order for American Skiing to sell Mt. Cranmore, of N Conway, NH.

I have been a resident of N Conway for 13 years, and have at time worked part-time at Mt. Cranmore, but not within the past 3 years.

Mt. Cranmore is viewed almost as a public trust in our area and provides employment and recreational opportunities at the core of this community.

Membership in a marketing group such as Attitash-Bear Peak-Cranmore can insure that Mt. Cranmore can maintain a competitive position, and acquire capital and assets with economy of scale.

Standing alone, Mt. Cranmore doesn't have the size or terrain to stack-up favorable against other ski mountain complexes in NH or Western Maine, further, Mt. Cranmore's opportunities to expand its facilities is fairly limited.

The overall Mt. Washington Valley region economy stands to gain more if our tourism guest's entertainment options are viewed as economically healthy enterprises.

Mt. Cranmore has always suffered boom and bust cycles coinciding with ownership changes injecting fresh funds.

Membership in a corporation such as American Skiing seems to be a more positive step towards steadier improvements, growth, and financial outlook.

We oppose D.O.J.'s divestiture order.

Sincerely yours,

Ronald Barber,

Pamela A. Barber,

364 Thompson Rd, N Conway, NH 03860.

State of New Hampshire

August 30, 1996.

Mr. Craig Conrath,

Chief, Merger Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Washington, D.C. 20530

Dear Mr. Conrath: We are writing you to strongly request a reversal of the order to LBO Enterprises, Inc., to divest itself of ownership of Cranmore Mountain and Waterville Valley ski areas. As we understand the intent of anti-trust laws, they are to protect small business and the population in general. Your divestiture order in fact creates a situation which the law intends to abate. Let us explain in greater detail.

Both ski areas have been through bankruptcy proceedings within the past 5 years and during this period of time have been a detriment, not an asset, to their surrounding communities. Until Les Otten and LBO Enterprises, Inc., obtained ownership, neither ski area was operating in the black side of the ledger. Under his guidance, both areas have returned again to their once profitable position; and more importantly, the adjacent communities have seen a tremendous increase in tourist dollars for their small businesses. We believe that, based upon past experience, any new owner(s) would not have the capital nor expertise to maintain Mr. Otten's marketing programs, and the ultimate loss will be to the citizens of the north country of New Hampshire. We cannot sit passively by and allow this to happen.

We truly hope that you will re-consider your position, and at the very least, advise us to the reasoning behind any decision to continue the divestiture order.

Very truly yours,

William E. Williams, Jr.,

State Representative, Grafton District 3.

For: Howard C. Dickinson, Jr., Carroll District 2, Gene G. Chandler, Carroll District 1, Henry P. Mock, Carroll District 3, Kipp A. Cooper, Carroll District 2, Paul K. Chase, Jr., Grafton District 6, Sid Lovett, Grafton District 6.

Mt. Washington Valley

September 5, 1996.

Craig W. Conrath,

Antitrust Division, U.S. Dept. of Justice, 1401 H. Street NW, Washington, DC 205530

Dear Mr. Conrath: The Board of Directors of the Mt. Washington Valley Chamber of Commerce with offices in North Conway, New Hampshire, are in support of the Task Force set up in our region to speak to the issue before you on the divestiture of Mt. Cranmore by the American Ski Company.

We feel that the efforts of the Task Force will show that the Ski Industry in general needs to be better understood and that this is an industry which has reached a plateau in regards to pricing. It has become unaffordable to the greater populace and therefore the threat of over pricing is of greatest concern to the industry itself. One of the best ways to control costs is to have companies which can utilize economies of scale within their own design which will solidify their own future. The American Ski Company is trying to do just that.

The health of the Ski Industry is of critical importance to our region. The ability for the owner of Cranmore to not only have the financial resources for the long haul, but to have the experience in the management, growth, and development of Skiing on a large scale is also vital.

Because the Board of Directors of The Mt. Washington Valley Chamber of Commerce represent a number of Ski Areas within our membership ranks, it makes it difficult politically to promote one area over the other, we can, however, wholeheartedly support this local Task Force and their efforts to help the Justice Department better understand the complexities of the Ski Industry and its impact on this economic region.

Sincerely,

A.O. Lucy,

Executive Director, Mt. Washington Valley Chamber of Commerce.

cc: Board of Directors, Jim Sommerville.

September 7, 1996.

Mr. Craig Conrath,

Anti-Trust Division, U.S. Dept. of Justice, Washington, DC

Dear Mr. Conrath, I am writing about the DOJ order to have OTTEN sell Cranmore and Waterville Valley. I have just read that other probably will sell these ski areas to Gillett. However, in case that sale does not materialize, I want to write you.

I *fully support* your decision to order Otten to sell Cranmore and Waterville Valley. I live in Glen, halfway between Attitash and Cranmore and thus am most familiar with the Cranmore situation. I am not a businessman; I have no financial interest in Cranmore or Attitash; I do not work for Cranmore or Otten, I am a PLAIN SKIER. I believe that making Otten sell Cranmore will BENEFIT me, a plain skier. With competition I believe I will get better and more skiing for my money. I thank you for thinking of me.

The local businessmen, local officials, and Congressman ___________________ give arguments stating why Otten should keep Cranmore. When carefully examined, the argument fall apart.

1. The pro-Otten business forces say that ''economies of scale'' will reduce or keep down ski prices. That's a bunch of baloney. Perhaps they forget how Otten RAISED Cranmore prices after he took over. Also the

business people seem to forget the NEAR-REVOLT of local people when Otten charged more and restricted the skiing of the local Masters skiing program.

2. The pro-Otten forces predict a possible disaster to our area if Otten is forced to sell Cranmore. That is over-speculation and pure nonsense. They mean PERHAPS not as many dollars in their pockets. They DO NOT care about the individual skier. If Mr. Gillett is typical of the possible ski area owners, than other ski area owners have as much or more interest than Otten in running a good ski area and in being a good neighbor with those of us who live in the area.

We need more competition, not less competition, in this area.

On another matter, please be careful with the words that Otten uses.

1. Otten builds Grand Summit Hotels but they are at the BASES of mountains, not on the summits.

2. Otten advertises Cranmore-Attitash as ''Ski the Presidentials.'' In reality the Presidentials are a series of magnificent mountains some 15 miles from Cranmore-Attitash, in ANOTHER COUNTY, and some 1000 feet higher than Cranmore-Attitash. Moreover, it would be dangerous for a normal skier to ski these above-tree-line peaks.

3. Otten and his people, when planning to build a huge new hotel in our area, called local residents who expressed concern ''enemies.''

This is the kind of man you are dealing with. Again, I applaud you for making Otten sell Cranmore. Do not bow to the many letters that Otten supporters and local businessmen write.

As an individual skier I am glad that someone in our federal government is trying to look after the interest of the skier.

Yours truly,

Richard M. Chrenko,

P.O. Box 913, West Side Road, Glen, NH 03838–0913.

United States of America v. American Skiing Company and S–K–I Limited

Civil Action No. 1:96CV01308; Filed: June 11, 1996; Comment Period: September 10, 1996

Mt. Washington Valley Task Force Report: Divestiture of Mt. Cranmore; Dated: September 5, 1996

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Town of Conway

September 5, 1996.

Mr. Craig W. Conrath,

Chief, Merger Task Force, Anti-Trust Division, U.S. Department of Justice, 1401 H Street, N.W., Washington, DC 20530

Dear Mr. Conrath: Enclosed herewith is the response report to the Department of Justice's judgment order No. 1:96CV01308 requiring the divestiture of Mt. Cranmore as a condition of the merger of American Skiing Company and S-K-I Ltd. This report is the result of many hours, involving meetings, collection of data, research, interviewing, and discussions by a special Task Force that is representative of the entire Mt. Washington Valley.

We urge you to read carefully and digest the report's contents. You will find a considerable amount of current data not used in your prior deliberations, unbiased professional opinion, feelings from lay people who are the core and heart of the economic region, and what we feel is a convincing collaboration of information which clearly and overwhelmingly justifies a modification of the consent decree not to require the divesting of Mt. Cranmore.

In the interest of thousands of individuals and families who reside in Mt. Washington Valley, the hundreds of businesses established in the Valley, the millions of U.S. and foreign visitors who vacation-tour-recreate in the valley, we urge you to be open and fair. If you are, your conclusion should be the same as ours in recognizing that the divesting of Mt. Cranmore is not in the public's best interest, there is strong and potentially devastating adverse economic impact, the Maine day/weekend skier issue is a myth not a reality, the market has been misunderstood and when properly defined creates a favorable Herfindahl-Hirschman Index ''HHI'', competitive pricing is market driven-self policing and not an issue, the merger does not create a monopoly, and the merger creates a natural geographic and economic marriage of two ski areas (Attitash and Mt. Cranmore) assuring the viability and economic growth of Mt. Cranmore and the region.

The U.S. Department of Justice's cooperation and patience over the past few months is greatly appreciated.

Any questions you may have should be directed to James B. Somerville, Town Manager, Conway, NH (603–447–3811), Task Force Chairman and spokesperson.

With confidence and anticipation we look forward to the Department of Justice's consent decree modification.

Respectfully submitted,

James B. Somerville,

Chairman, Mt. Washington Valley/Mt. Cranmore Task Force.

TASK FORCE

Name	Position/Business
William Bartlett, PO Box 1856, Concord, NH 03302–1856, 603–271–2411.	Commissioner—Dept. of Resources & Economic Development, State of New Hampshire.
Taylor Caswell, 1210 Longworth House Office Bldg., Washington, DC 20515, 202–225–5456.	Representative—Congressman Zeliff.
John Cavanaugh, 99 Pease Blvd., Portsmouth, NH 03801, 603–431–2171.	Representative—Senator Gregg.
Mark Aldrich, 50 Phillipe Cote Street, Manchester, NH 03101, 603–634–5000.	Representative—Senator Smith.
James B. Somerville, PO Box 70, Center Conway, NH 03813, 603–447–3811.	Conway Town Manager, Chairman, Mt. Cranmore Task Force.
William D. Paine, Esq., PO Box 40, Intervale, NH 03845, 603–345–5562.	Judge/Attorney.
William Cuccio, PO Box 372, North Conway, NH 03860, 603–356–6041/5578.	Restaurant Owner/Selectman.

TASK FORCE—Continued

Name	Position/Business
Dewey Mark, Red Parka Pub, PO Box 173, Glen, NH 03838, 603–383–4344.	Restaurant Owner, President of Mt. Washington Valley Chamber of Commerce.
John A. Cuddy, PO Box 235B, North Conway, NH 03860, 603–447–3700.	Banker, Mt. Cranmore Ski Instructor 17 years.
Tyler Palmer, Palmer Insurance, PO Box 400, Intervale, NH 03845, 603–356–6926.	Insurance Agency Owner, Former Olympic Skier.
Arnold Blethen, PO Box 142, North Conway, NH 03860	Retired Business Owner/Mt. Cranmore Ambassador.
David Urey, PO Box 337, Conway, NH 03818, 603–447–6331	Retired Corporate Lawyer.
Judy McGinty, PO Box 339, Intervale, NH 03845, 603–356–5762	New Hampshire Electric Coop., Public Relations.
Gene Chandler, Rte. 302, Bartlett, NH 03812, 603–356–2950	NH State Representative, Bartlett Selectman, Real Estate Sales.

Opening Statement

1. This report concentrates on Mt. Cranmore with a position from the outset that it should not be included for divestiture as a condition of merger. Using the Department of Justice's (DOJ) documents of decision as a base reference, the report is specific in addressing what the Task Force considers to be ''flawed'' conclusions/ philosophies/assumptions and facts.

In each area of concentration, based on collected and researched data, new facts, and professional opinion, the report substantiates why the DOJ's premises are flawed and, in so doing, new conclusions and opinions are drawn. The report does not attempt to definitively look at every minute detail or issue.

Primary subject areas are fully covered as follows:

MARKET
COMPETITION/PRICING
MONOPOLY
ADVERSE ECONOMIC IMPACT
INFRASTRUCTURE/SKI INDUSTRY SURVIVAL
''HHI''

2. Because of developments as of August 31 with the announcement by American Ski Co. of a potential buyer, a more universal comment section which zeros in on the principal of DOJ's involvement in a leisure industry which markets to the consumer's discretionary available dollar has been added to this report, entitled ''Have They Gone Out-Of-Bounds?''

3. All statistics and professional opinions are verifiable and contained in the referenced resource documents or through contacting the professional references used in preparing this report.

Overview of Dept. of Justice Positions

1. Selling of Mount Cranmore will preserve competition, the merger will lessen competition substantially.

2. American Skiing Co. would have control of eight of the largest ski resorts in eastern New England.

3. Merger would raise prices.

4. Merger would eliminate discounts to Maine residents for day skiing trips and to residents of Maine, eastern Massachusetts, eastern Connecticut and Rhode Island for weekend excursions.

5. About $400 million was spent last year on skiing in New England.

6. Weekend and day ski market is Maine, eastern Massachusetts and Connecticut, and Rhode Island.

7. Eastern New England and Maine constitute a relevant geographic market.

8. Provision of Skiing comprises all services related to providing access to downhill and snowboarding, including ancillary services such as food service, entertainment, and lodging.

9. Most skiers travel some distance to ski.

10. Pricing, discounts, ski packages vary and can be market targeted.

11. Downhill skiing differs from other winter recreational activities.

12. A small increase in prices for skiing would not cause a significant number of downhill skiers to substitute other winter recreational activities for skiing.

13. Skiers are not willing to travel an unlimited distance to ski.

14. ASC and S–K–I compete and both provide skiing to eastern New England weekend skiers at each of their ski resorts.

15. There are a limited number of resorts with adequate services in Maine, New Hampshire and Vermont for weekend skiers.

16. Smaller ski resorts located farther away cannot and, after transaction, would not constrain prices charged to weekend skiers living in eastern New England.

17. Skiing at smaller or more distant resorts is not a practical or economic alternative for most eastern New England weekend skiers most of the time.

18. ASC and S–K–I control the only resorts Maine residents can go to for day skiing trips.

19. Mt. Cranmore can charge prices to Maine day skiers different from prices they charge to other skiers.

20. Competition between ASC and S–K–I providing skiing to eastern New England weekend skiers would be eliminated.

21. Discounting to eastern New England skiers by ASC and S–K–I resorts would likely be reduced or eliminated.

22. Prices for skiing to eastern New England weekend skiers would be likely to increase.

23. Competition, generally, in providing skiing to Maine day skiers would be lessened substantially.

24. Actual competition between ASC and S–K–I in providing skiing to Maine day skiers would be eliminated.

25. Discounting to Maine day skiers by ASC and S–K–I resorts would likely be reduced or eliminated.

26. Prices for skiing to Maine day skiers would be likely to increase.

27. The merger would substantially increase concentration in the eastern New England weekend skier market and Maine day skier market using the ''HHI'' as a measure of market concentration.

28. Post merger would increase the ''HHI'' to 2100 with a change of 900 pts. for eastern New England with a 43% market share. It would be 2900—up 1200 for Maine and eastern New Hampshire, with a 50% market share.

29. Successful entry or expansion in skiing business would be difficult, time consuming, costly and extremely unlikely, and not sufficient to prevent any harm to competition.

30. The post merger, after divestitures, would show an ''HHI'' of under 1800 and a market share less than 40% in eastern New England. For Maine day skiers the ''HHI'' would be over 1900 and a market share of less than 35.

Task Force Rebuttal

Market

Analysis of the relevant MARKET is imperative to the credibility of DOJ's findings. We strongly feel and are convinced that what DOJ has determined to be the relevant MARKET is seriously flawed. There are three (3) markets which affect Mount Washington Valley and the subject Mountain of Cranmore.

The first is an ever growing global market. Since DOJ's judgment places a strong emphasis on day trippers and weekend skiers, one only needs to be aware that it exists and that it will cause a future decline in the percent of day and weekend skiers as that number is relatively stagnant, yet the total numbers will grow as successful global marketing takes hold in New England.

The second market has unjustly been narrowed to Maine and eastern New England (actually north eastern New England). The number of skiers visiting NH from Rhode Island at 4.3% exceeds Maine's 3%, and Connecticut at 2.8% isn't far behind. New England represents 82.8% plus whatever visits occur from Vermont and even New York read in at 2.2%. Mt. Washington Valley is definitely a New England market destination and should be openly accepted as such by DOJ. The number for the HHI should accordingly be reworked and we challenge the DOJ to seek a second outside opinion and study to verify or refute the HHI. This will be discussed in more detail later in the report.

The third market is the COMPETITIVE MARKET PLACE once the skier arrives in Mt. Washington Valley. Within an hour and fifteen minutes there are no less than fourteen (14) ski areas to meet the desires and needs of every individual, family, skill level, diversity, weather condition and consumer cost level. DOJ has made no recognition or mention of this unique market place whose intensity probably cannot be found anywhere else in the world. A day skier traveling from New England's four (4) hour drive from market can, and does go to any one of the ski areas, and the weekend or five day and longer skier will set down in the Valley or another resort area with accommodations and likely consider skiing more than one area during the visit. With this type of market place, it is difficult to conceive how the DOJ cannot understand and believe in the free enterprise system, the supply and demand market place, the discretionary recreational dollar and that competitive pricing and consumer services will be self monitoring.

Monopoly

There simply is no likelihood of monopoly. Leaving Mt. Cranmore in the merged entity will have no significant impact on concepts of monopoly. Mt. Cranmore represents only 3.7% of the merged entity skier day volume (1996 data) and is by far the smallest entity. With divestiture of Waterville, Mt. Cranmore is still only 4% of the merged entity volume. Combining the skier visit volumes of Attitash/Bear Peak and Mt. Cranmore, the volume is till only 10.5% of the merged entity (without Waterville). They further represent a combined penetration of only 14% of the New Hampshire skier visit volume. Figures have not been obtainable to date which would show the percentage ratio of Sunday River, Attitash and Mt. Cranmore to the 14 ski areas in the skier destination market place which are:

Cranmore	Sunday River
Attitash	Balsams
Loon	Shawnee
Waterville	King Pine
Cannon	Gunstock
Black	Mt. Abram
Wildcat	Bretton Woods

Common sense says that the numbers would be favorable and not reflective of a monopoly positioning.

The Task Force feels it is important that the DOJ consider Attitash/Bear Peak and Mt. Cranmore as a marriage and *as one* in the market place. (See Appendix E) The DOJ should carefully weigh the efficiencies and costs of operations that the prior merger created in order to be competitive, creative and sustainable. The two areas offer all the positive incentives for operational cost effective efficiencies. The proposed order would undo the efficiencies already achieved by the operational combination of Attitash/Bear Peak/Cranmore. The two mountains are within 10 miles of each other, they offer a wide diversity of skier skills, snow making, length of season, on site non ski recreational and entertainment facilities, share the same off slope amenities, and are closely connected by rail train (snow skier, tourist run scheduling are being negotiated and highly probable). They are not in competition with each other and the demographics make them a perfect marriage. The efficiencies are self evident . . . marketing, staff, planned diversity, economy of scale in such areas as electric rates, equipment purchases, food purchases, etc. An example of the effect and advantage of combined marketing is provided in Appendix E. The brochures also highlight the Task Force's position that the two areas are a natural marriage.

The inclusion of Mt. Cranmore in the merged entity is clearly not the development of a monopoly. It is, instead, an example of leadership, running a business with an innovative management style and in a manner which will enhance the community, the sport, and the current and future success and sustainability of Mt. Cranmore. There is no other marriage that can come close and offer as much value. The need is there, and the ''at risk'' financial history of Mt. Cranmore speaks for itself. Based on Cranmore's pre LBO history over the past 10+ years of being unable to pay its operating bills, foreclosure, lack of credible buyers, etc., it may well qualify as a ''failing firm'' under DOJ's Horizontal Merger Guidelines.

Competitive Pricing

The DOJ placed a lot of emphasis on pricing with a weighted concern to the Maine day skier and eastern New England weekender. Packages of lodging, food and skiing, discounts, season tickets, smart cards, etc. are a way of life, part of marketing, supply and demand, and the free enterprise system. However, several issues need to be made very clear as the entire DOJ discussion reflects a possible lack of understanding of the ski industry.

1. The sport of skiing is discretionary, absorbing available discretionary dollars from persons earning an income where such dollars exist. In the 1995–96 season 37% of New Hampshire skiers had a principal income of $75,000 and 31% $50,000 to $75,000. That means 68% of those skiing in New Hampshire had a principal income of over $50,000. In 1994–95 37.3% had a household income in excess of $75,000.

2. Because there are 14 ski areas within the immediate area, if any one or two or even five areas raised their prices too high, the existing competitive market would seriously erode their consumer base.

3. Within the Valley's market area prices vary significantly, but they also undoubtedly reflect conditions, skill levels, and infrastructure aspects from which people in our society freely select. Skiers, as in the case of most consumers, are very dollar/value oriented.

4. No one on the Task Force is aware of any ski area which markets to the day skiers with different rates dependent on the State in which they reside.

5. The day skier to Mt. Cranmore, for example, who is normally a frequent skier, has the option of a seasonal ticket. If they work for a company in the Valley that is a member of the Chamber of Commerce (many do from the Fryeburg, Maine area) they can purchase a discounted employee ticket.

6. Because a combined Attitash/Bear Peak/Cranmore has and will continue to cause cost effective operational efficiencies, it is more probable that pricing will go down—not up—subject to labor and other indexes or inflation. This will make enhanced qualitative

skiing more affordable to those with less discretionary dollars. The combined efficiencies of Attitash/Bear Peak/Cranmore make these savings and lower relative pricing a reality as evidenced at Attitash/Bear Peak/Cranmore. The result satisfies the primary purpose stated in the Horizontal Merger Guidelines which is ''the primary benefit. * * * lower prices to consumers.''

7. Ski areas outside the merger will enjoy the benefits of the more global marketing of the merged entity. Because the area can absorb and entertain all levels, they will get a significant consumer spin off. One must understand skiers are not going to visit and ski just one mountain. The draw and excitement is to try others. Therefore, the more people that come to the Valley, the more skiers all areas have, pricing stays competitive and the remaining independent resorts have improved opportunity to self sustain. Without Mt. Cranmore in the merger family, fewer global marketing dollars will flow out to benefit the valley and ski market area. It will be more selfishly oriented, the other ski areas will not be the benefactors, fourteen (14) ski areas will decline and Attitash, along with Sunday River, will be the big winners with a greater share of the skier visit volume than if Mt. Cranmore remained in the merged entity.

The Task Force unquestionably feels the DOJ's pricing theory and approach are seriously flawed and are not a justifiable concern.

Maine Day/Eastern New England Weekend Skiers

(DOJ has not delineated geographical boundaries.)

The issue has already been partially discussed, however, facts and figures require a close look.

1. In 1995–96 New Hampshire had 2,321,158 skier visits.

2. Of those visits only 4% (92,846) were from Maine. The data available does not reflect how many of those skiers were day visits, and it is not reliable to assume that the mass majority were. For example, from December 1995 through April 15, 1996, the Mt. Washington Valley Chamber of Commerce reported that 5.6% of lodging reservations they made were from Maine, and that 5.7% of all inquiries were also from Maine.

3. Available 1996 data further shows that Mt. Cranmore had 125,000 skier visits of which 6,500 (5.2%) were from Maine and Attitash had 201,000 skier visits of which 4,422 (2.2%) were from Maine.

4. This means that 93% of the 92,000± Maine skiers of all categories did not ski Mt. Cranmore and 88.2% did not ski either Attitash or Mt. Cranmore.

5. By DOJ's own admission, Waterville Valley would see an insignificant number of Maine day skier visits.

6. The above, beyond a reasonable doubt, refutes the DOJ's theory and assumptions that the merger would monopolize and cause prices to increase for the Maine day skiers. 88.2% of the Maine skiers that come to New Hampshire ski at other locations which are not part of the merger makeup. No doubt most of them ski at one of the other eight ski areas in NH located in the Mt. Washington Valley's market area. Further, the monopoly and price issue at the Maine locations is moot as the DOJ's findings reveal that the Maine's Attorney General negotiated a pricing discount program for Maine residents which the DOJ is apparently satisfied with. In the reverse, NH skiers going to Maine are not concerned about price discounts as they are more apt to ski for the experience. Also they recognize the cost relationship of qualitative infrastructure, services and product. NH's local market with its many ski areas and free enterprise competitive market place, offers significant alternative pricing opportunities for those who desire it. The state of Maine, by trying to discriminate, will be the loser as NH residents will stay home. Remember that others will have to pay more to offset discount tickets, especially if the prices are below the cost of doing business.

According to the statistics compiled by the Institute for NH Studies for the 1994–95 season, only 3% of NH's skiers were from Maine for the entire season. Of those skiers surveyed, 68% were on a ''multi-day trip,'' thus less than 1.5% of NH's skiers were on a ''day trip'' from Maine. This is even smaller than the 2.5% of NH skiers from Florida, all of whom would have to have been on a multi-day trip. The segment of the population which the DOJ purports to protect by the proposed divestiture of Cranmore is nearly *deminimus,* and is a smaller segment of the market than even the skiers from Florida. This indicates to the Task Force Committee that the DOJ has chosen an inappropriate ''relevant market'' on which to base its order of divestiture.

7. Eastern New England Weekenders: With Maine out of the picture, even though we do not agree with the DOJ's definition of market area, the skier who comes to NH is narrowed down to eastern Massachusetts and Rhode Island.

While statistics are confusing with so many variables, it is difficult to create any meaningful data. What is known is:

- An average travel group is 5.06.
- Approximately 26% own property in the Valley.
- Cranmore had 65% of its skiers from Massachusetts (not known how many are eastern Mass).
- 78.2% stayed one night or more each visit—how many visits unknown.
- Available identified data on Rhode Island skiers is limited.

Due to the density of population in Eastern Mass. and the financial affluency of the market area, it is difficult to envision the DOJ's concern. There are so many choices from great day skiing at Nashoba, Wachusett and Temple to weekend alternatives from the Berkshires and throughout northern New England. Many of the 2nd homeowners in the Valley take advantage of seasonal tickets or enjoy the flexibility of a 14 ski area market for their growing families. Throughout the ski season they are prone to try many of the different areas. If they, as consumers, were surveyed or interviewed the DOJ would know how thrilled they are with the merger, and the confidence they have that it is in the public's best interest. There is little to no concern with the weekender market about monopoly and prices.

Economic Impact

The DOJ's decision to require divestiture of Mt. Cranmore has caused an alarm of concern to go off throughout the valley. Mt. Cranmore has struggled too long and the Task Force does not believe it can survive as a status quo stand alone operation. Economists we have communicated with concur. We finally got the wheel fixed, why try to tell us it has to be broken again?

The required action will have an immediate adverse economic impact in Conway. Concerns are already being seen with properties adjacent to Cranmore and confidence levels are depleting within the business community.

1996 saw $80 per skier visit spent in New Hampshire which equates to $10,000,000 being spent at Mt. Cranmore, plus an additional $110 or $13,750,000 of secondary sales. Since Mt. Cranmore is not a self contained resort, the actual secondary sales could be higher in Conway and Mt. Washington Valley.

Mt. Cranmore is the center of Conway's economy. The mountain is rapidly moving into year round recreate and entertainment which will increase the economic stature, need and value in the Valley. As a major destination resort the well being of Mt. Cranmore is essential to our resort/tourism economy.

The DOJ, prior to its decision, did not evaluate adverse economic impact to Conway and the Valley. Placing it on the block and taking it away from its positive management/ownership and direction puts the mountain in jeopardy. Should history repeat itself, and the DOJ cannot guarantee the end result of its decision, it would cause chaos and a devastating economic blow which would seriously cause loss of jobs, closure of businesses and negatively affect the Valley's reputation as a quality family resort. Not enough can be said as to the importance of Mt. Cranmore. The potential harm if DOJ is wrong, which we believe they are, far outweighs the issues of monopoly and pricing. You are talking about livelihoods, jobs, families, business investments, not $2–$4 on a ski ticket. You are talking about the necessities of life not the expenditure of discretionary income.

The struggles of Mount Cranmore to survive over the years have slowly caused the ski area to be what it is today. Through time, the separate entities of the ski area and tennis/recreation club merged together and the ski development easement rights were created, and a hotel site was approved. Regardless of the owner, these segments need to remain bound together as the Mount Cranmore Recreation area. To segregate them now or in the future endangers the probable well being of the area and certainly its future expansion opportunities. The DOJ expressed during its visit and meeting with the local Task Force that it appeared the decision documents should have been more specific as concerns what would be divested at Cranmore and that it should all stay intact.

Overview of Ski Industry Survival

A. Infrastructure: The 1994/95 Kottke National End of Season Survey and the National Ski Areas Association and Ski Industries of America professional viewpoints strongly reflect that the industry is going through a major change in order to survive. With a stagnant U.S. skier consumer group, the only national upswing has been the market development of snowboarding.

The costs to operate and maintain the state-of-the-art infrastructure are increasing at a rate that far exceeds the ability for the U.S. skier population to afford to sustain and are grossly disproportionate. One result has been that over the past ten years ski resorts have declined from 750 to 52 (30%)—ALMOST COMPARABLE TO THE BANKING INDUSTRY.

To survive—ski resorts—are becoming a leading force in efficiency of operations, cost effective management and creative operations. To do this, mergers and special unique marketing and partnership deals have rapidly become a way of life. Operating ski resorts acting alone without sufficient leveraged capital are not surviving, and will not if the DOJ is to position itself to disallow cost effective efficient operational mergers. As clearly pointed out in the National Ski Areas Association's letter to the DOJ, Mr. Otten has risen as an exemplary leader in the industry from which all who want to survive are looking to his methodology and example. The DOJ's decision on the subject merger, if not modified, will be self destructive and lead toward the potential decline and demise of a national industry which is extremely important to the national resort and tourism economy. It is difficult enough to have positive economic development. The industry certainly does not need the DOJ's help in motivating failure.

Mt. Cranmore, as a stand alone ski area, does not have the skier capacity to generate the revenues to maintain and enhance its infrastructure, provide a qualitative experience, and market its existence. Because of American Ski Co. holdings and capital leverage abilities, the operational and infrastructure efficiencies took hold immediately and, to a degree never before experienced at Mt. Cranmore, such as pass through snowmaking equipment from Sunday River (light years ahead of what Cranmore had), new detachable high speed quad lifts affordable due to multiple site purchase needs, cost effective joint location marketing, and the story goes on. This simply expands the area of market draw, brings people for weekday skiing, pays overhead during the week so they don't have to raise prices for day and weekend skiers. Mt. Cranmore, after many years, literally leaped into the modern world. The DOJ's decision will stagnate the ski area and it will rapidly recede behind the times as a stand alone ski mountain and will not survive in the future market. Reference is once again made to the Horizontal Merger Guidelines of the DOJ.

B. Global Market: The need to develop a global market has been touched upon throughout this report. One reason so many ski areas have failed in the northeast has been an attitudinal problem that we do not offer comparable quality and that we are DRIVE-TO resort destinations. The ability to make ample snow, hold it on the slopes, properly groom the snow, extend the season, are examples of change and quality. The new challenge is to attract the more distant traveler to try the experience and reach out into a market place which is foreign to New England ski areas. To keep user costs down and maintain an affordable sport, an expanded market is required both to those in the U.S. in warm weather geographic regions and international markets. Foreign tourists are the only import trade which is actually on the export side of the trade deficit as they spend their money here. Mergers free up dollars for global marketing which help many enjoy increased skier use they would not ordinarily have.

C. Mergers: In the ski industry mergers are the current and future wave. If they are disallowed, the industry will continue its decline. The concerns of monopoly and pricing fly in the face of reality in a recreational, non necessity, discretionary industry. The DOJ should not jump to anti-trust assumptions. The Task Force is confident that by letting Mt. Cranmore remain with the merged entity, the assumptions made by DOJ will prove to be wrong. Instead, the DOJ should put TRUST in the American Way. Whether right or wrong, Mt. Cranmore is so small in the big picture that little harm will come of it and the DOJ will have a documented experience to base future decisions on.

Mt. Washington Valley—It is More Than Skiing

The area is as close as a resort destination can be to being year round. Surveys show an extremely high level of use (and growing) at both Attitash and Cranmore. The mountains themselves are used for year round recreation (biking, hiking, sledding, horseback riding, water slide, dining, bird watching, foliage looking, X country skiing, snow shoeing, snowmobiling, tennis, swimming, etc.). In addition, they are a part of the whole which makes Mt. Cranmore and Mt. Washington Valley a major New England destination family resort. If Mt. Cranmore is not part of the merged entity, it will have a major negative impact on the whole with its inability to maintain what it now offers and to grow into the future as it responds to society's changes and demands.

Herfindahl Hirschman Index (HHI)

New Hampshire as a state and Mt. Cranmore as part of Mt. Washington Valley, is the core in the New England market place. Sixty percent of all NH vacationers and tourists come to the White Mountains. It is estimated that over 8,000,000 come to or through Conway, NH. Based on previous market discussions, the DOJ's HHI is probably seriously flawed. It is unknown which ski areas were used for the Index. However, it is obvious from the data we have that all of the 14 ski areas identified should be used. In addition the following should be used as a minimum: Ragged, Temple, Whaleback, Sunapee, Saddleback in ME; all but Burke and Jay Peak in VT, Wachusett, Blue Hills and Nashoba Valley in MA, with possible consideration of the Berkshire ski areas as they are eastern New England weekend accessible. If DOJ is determined to hold to its vision of what Cranmore's market is, then they must also acknowledge that the skiers from that same market place don't just come to Mt. Washington Valley.

It is the opinion of the Task Force that the DOJ's methodology in calculating the HHI is significantly flawed if the true market has not been recognized and all ski areas were not used in making the calculations. Day skiers in eastern Massachusetts can just as easily frequent Nashoba, Wachusett and Temple, for example. Weekenders can seek diversity and just as readily go to the Berkshires. The Task Force recommends Prof. Bill Fischel, Economist, Dartmouth College, NH, who is well versed in New England economy and the ski industry, be used as a source by the DOJ for recalculating and developing the ''HHI'' to a properly identified market area with specific concentration in relation to Mt. Cranmore.

Recapitulation of Economists Input

1. The impact on New Hampshire's skiers was not addressed by DOJ. Was the justification based at all on real skier data? What is the number of Maine skiers that skied in NH versus the total number of Maine skiers? What were the NH ski areas that were visited?

2. The government has not demonstrated that higher prices will occur or that higher prices will be unacceptable to the skiing public. What is the price elasticity of lift prices? At what price will skiers choose another ski area? ASC & S–K–I will not control the whole market. Higher prices are justified and acceptable to skiers when there is an increase in the level of services, improvement/expansion of the ski area or added amenities. Such improvements were being pursued at Cranmore.

3. Skiers do not make their decision on where to ski based on lift ticket price alone. Arguably, ski conditions at an area is the primary decision factor. Other factors are ski area terrain, exposure to weather conditions, lift facilities, lift lines, and proximity to the skier. Ski area amenities such as food, lodging, shopping, etc., are some additional factors.

4. As part of a Mt. Washington Valley resort complex, Cranmore helps bring in tourists to the area.

5. The economies of scale that ASC/S–K–I merger brings, access to capital and marketing synergy would benefit Cranmore, Cranmore will find it much more difficult to ''compete'' as a stand alone ski area.

6. DOJ is not correct when it states that expansion of an existing area by other parties is difficult to undertake and is not an option as a response to the merger.

7. DOJ states that ASC and S–K–I together had 43% of the skier days in northern New England. Correct current data shows that it was actually 37% at all ski areas in the three states. Concentration without divestiture would result with Maine at 47%, Vermont at 39%, and New Hampshire at 25%.

8. Day trip skiers (on average) have lower average skill levels and are more likely to ski at smaller (non resort) areas. These smaller areas do not appear to have been included in DOJ's ''HHI'' calculations. It is not clear what ski areas in NH were used when the index for Maine day skiers was calculated.

9. The DOJ assumes that Cranmore will be attractive to another buyer at a fair market price. Ski areas of Mt. Cranmore's size have a mixed record of viability as stand-alone areas. Successful marketing of the ski area to day trippers is imperative if this area is to survive. It would not be in the interest of the operator to raise prices to the level that it would not attract a significant volume of day trip skiers. There are many other ski areas competing with Mt. Cranmore for this day trip skier market.

10. The nature of the skier market nationally and internationally is changing. Ski areas in the region are increasingly attracting skiers from the middle Atlantic states, eastern Canada, western Europe, Florida and even Latin America. *Only* large marketing organizations can compete with Rocky Mountain, Canadian and European ski areas to attract skiers from these markets. The growth of the industry in New England can occur only by attracting new skiers from outside the region. The larger ski areas and organizations are a form of economic development as they bring additional tourists into the region which would not otherwise take place.

11. The list of ski areas used in measuring the HHI should be the subject of further research. Massachusetts ski areas should be included in the analysis of serving day trip skiers (and weekenders) in southern New England, called eastern New England in the court filing. The viability of small ski areas which do not have a nearby, related larger area in today's economy is not evaluated by the DOJ. The economic development component of the ability of a larger organization to attract skiers from new, more distant markets is not considered at all by the DOJ.

The Maine Comparison

The enclosed reference document, entitled ''Research Memorandum—Profile of Visitors to Maine's Ski Resorts, Winter Ski Season 1994–95,'' is worthy of the DOJ's review.

In all probability, the habits of skiers should be fairly consistent regardless of the state they visit to ski. The greatest differences between the skiers visiting New Hampshire versus Maine, appear to be in dollars spent per ski visit and size of travel group. This can be readily understood as the Maine report reflects that they *come to ski,* while they seek a more broad based winter vacation experience when they visit the likes of Mount Washington Valley. Visitors simply do more crossover activities such as cross country skiing, shopping, and dining, and the ski areas are more community resort oriented.

The most significant aspect of the study is the confirmation that the market is New England and not the Main day skier/eastern New England weekender. This is documented by both the NH and Maine data showing where the skiers come from, and providing interesting statistics on *where else* those same skiers ski throughout the winter season.

Skier visitors to Main ski often. 16.6 times in Maine, 6.7 times in New Hampshire, 4.9 times in Vermont, and 8.4 times elsewhere. They are very diverse and mobile. If similar data was collected on skier visitors to New Hampshire, comparable figures would no doubt hold true.

- 29% (93–94) of visitors to Maine also skied in NH, and 21% in VT.
- 78% of Maine's market is New England based.
- 5% of Maine's skier visitors come from NH versus 3% of New Hampshire's skier visitors coming from Maine.

Conclusion/Recommendation

The Task Force, representing Mt. Washington Valley, concludes that the Department of Justice has erred in its decision. Replacing dated data, assumptions, and ski industry conceptions with current data, reality, facts of life and a more informed understanding of the ski industry should allow the Department of Justice to modify, with clear conscience, its order. This report provides the DOJ with concise, factual information which, if known or available to DOJ during its evaluation and decision making process, would have naturally led to a different order.

Mt. Cranmore, irrefutably, should remain in the merged entity. There is absolutely *no* reason, logic, statistical data, economic philosophy, formula of monopoly, or price control methodology that supports the divestiture of Mt. Cranmore. To the contrary, what truly serves the public's best interest and assures the success, viability and future sustainability of Mt. Cranmore, and the entire well being of the area's economy, is to modify your order and allow Mt. Cranmore to stay under the ownership and management of American Skiing Co.

Have They (DOJ) Gone Out of Bounds?

Is the American public wrong? The Task Force has not found an iota of public opinion which supports DOJ's decision. Whether lay persons, consumers, ski resort operators, or professionals and associations why live by the existence, success of the industry, it is evident the DOJ is not welcome in the leisure industry. No one can understand why the DOJ feels it is within the DOJ's purview to interfere in a market place which attracts the consumer with available discretionary dollars.

The skier market, for example, is going through major ''survival'' transition as has been strongly touched upon in this report, and it is the unanimous feeling of the Task Force that the DOJ is dead wrong in considering that the ski resort market place is a self-contained market place. The DOJ is acting like a trotter race horse wearing blinders—they see the finish line, but move in a disciplined manner with no peripheral vision—they simply don't see the whole field, the big picture. The ski industry is not in competition with itself—through mergers, it is learning to survive against a much bigger market place commonly known as the Leisure & Sports Industry. The DOJ cannot close its eyes to gambling resorts, the Disney Worlds, the massive growth of cruise ships, the ever growing smaller world and access to warm weather resorts, adventure/experience trips, shopping (the #1 leisure activity in America), theater trips, arts-music, or simply paying equal to lift ticket ski prices to go to an L.A. Lakers basketball game in the upcoming season because they paid equal to the subject merger for one player's salary and percs.

Because of the general economic condition of the ski industry, the DOT must carefully reinvestigate its Horizontal Merger Guidelines and, with open eyes and minds, recognize that the American Ski Co. decision has universal impact and could be the first step in devastating an American pastime, causing an adverse impact on an industry in a manner opposite from the proposed purpose of its actions.

Should the consent decree not be reversed, the DOJ should seriously consider a careful review of the anti-trust act in relation to today's world.

Speaking not only for Conway, Mt. Washington Valley, and the State of New Hampshire, but also for the entire ski industry and the discretionary dollar leisure-sports market place, the DOJ has gone out of bounds!

Research References and New Statistics and Information

1. Committee members
2. Dr. Larry Goss, Economist, Institute for NH Studies
3. National Ski Areas Associates, Colorado
4. Northern Economic Planners—Ski-NH, Inc. Skier Survey 1994–95 Season
5. The NH Ski Industry 1992–93—its contribution to the State's economy
6. Kottke National End-Of-Season Survey 1994–95 *and* Data from 95/96 Survey
7. American Skiing Company—Confidential—Offering Memorandum
8. Department of Justice from Discussions to releasable information and base decision documents
9. Ski Area Management Magazine—July 1993 Articles by Jim Spring and David Rowan
10. Sno engineering: Market Research results for 1995/96 Ski Season
11. Mt. Washington Valley Chamber of Commerce
12. National Skier Opinion Survey—1992–1996—Leisure Trends Group
13. Roland Vononlsen, Economist, NH Electric Cooperative, Inc.
14. Wall Street Journal
15. State of New Hampshire Dept. of Resources & Economic Development
16. Ski Industries of America
17. Davidson-Peterson Associations, Inc., Research Memorandum for Ski Maine
18. US Department of Justice Horizontal Merger Guidelines

Kottke National End of Season Survey

It is the Task Force's understanding that the DOJ used the 1993/94 Kottke National End of Season Survey as a base professional reference.

We strongly urge the DOJ to carefully review both the 1994/95 and the ''just off the press'' 1995/96 Kottke final reports prepared through the National Ski Areas Association.

Significant changes and new areas of data and information have been integrated into the reports as compared to the 1993/94 version.

Coping with infrastructure demands, capital needs, market trends, rapid industry movement toward partnerships/mergers to avoid becoming a historical statistic, and creative management are now all reflected in the report. DOJ will find the material educational and informational toward better understanding the ski industry of today. DOJ will find that the consumer experts are very supportive of Mount Washington Valley's Task Force position on Mount Cranmore and today's necessity that Cranmore remain part of the merged entity to serve the public's and the industry's best interest.

Industry Overview

The U.S. ski market is a fragmented industry, with 516 ski areas in operation during the 1995–96 season. Over the past 15 years, participation in the sport of skiing has remained relatively stable, averaging approximately 50 million skier visits nationally. No single ski area accounted for more than approximately 3% of 1994–95 skier visits. The market is characterized by both regional and national competition.

NATIONAL SKI AREAS ASSOCIATION REGIONS AND SKIER VISITS

[In thousands]

Season	Northeast	Southeast	Midwest	Rocky mtn	Pacific West	Total
1991/92	12,252	4,425	6,535	17,687	9,936	50,835
1992/93	13,217	4,660	6,978	18,602	10,575	54,032

NATIONAL SKI AREAS ASSOCIATION REGIONS AND SKIER VISITS—Continued

[In thousands]

Season	Northeast	Southeast	Midwest	Rocky mtn	Pacific West	Total
1993/94	13,718	5,808	7,364	17,503	10,244	54,637
1994/95	11,265	4,746	6,907	18,412	11,346	52,676
1995/96*	13,830	5,274	7,144	18,007	8,861	53,116
Northeast: CT, MA, ME, NH, NY, VT, RI						
Midwest: IA, IL, IN, MI, MN, MO, ND, NE, OH, SD, WI						
Pacific West: AK, AZ, CA, NV, OR, WA						
Southeast: AL, GA, KY, MD, NC, NJ, PA, TN, TN, VA, WV						
Rocky Mountain: CO, ID, MT, NM, UT, WY						

Source: 1994/95 KOTTKE NATIONAL END OF SEASON SURVEY.
* Preliminarily reported by Kottke National End of Season Survey 1995/96.

The ski industry is presently experiencing a period of consolidation and attrition, which is reflected in a significant decline in the total number of areas over the last ten years. Management believes that the driving forces behind both consolidation and attrition are the need to gain access to capital to maintain state-of-the-art facilities and the need to retain professional management, and the inability of numerous resorts to keep pace with the competition with respect to one or both of these market forces. The trend among leading resorts is toward investing in improving technology and infrastructure so as to deliver a more consistent, high quality product.

The NSAA defines the Northeast ski resort market as encompassing the New England states and New York, although the Company believes its market extends as far as the Mid-Atlantic states and southeastern Canada. The Northeast market has averaged approximately 12 million annual skier visits over the last fifteen years. Within the Northeast region, skiers can choose from among over 50 major resorts. The region's major resorts are concentrated in the mountainous areas of New England and eastern New York, with the bulk of skiers coming from the population centers located in eastern Massachusetts, southern New Hampshire, Connecticut, eastern New York, New Jersey and the Philadelphia area. Data collected at Sunday River indicate that approximately 43% of its weekend skiers reside in Massachusetts. Similar data collected at Killington and Mt. Snow indicate that approximately 23% and 35% of their weekend skiers, respectively, reside in New York, with high concentrations from Massachusetts, Connecticut, New Jersey and Vermont.

The Northeast ski market consists of essentially two segments: day skiing and vacationers. The day skiing market is comprised of skiers who live within a four hour driving radius of a particular resort. Day skiers may stay for one to two days in a single trip. Approximately 35 million people lie within the Company's day skiing market, which includes the New York and Boston metropolitan areas. The vacation market is a national market for destination resorts. While the Northeast does not draw significant numbers of vacationing skiers from the Western regions of the country, it competes with the Rocky Mountain and Pacific Northwest areas for Eastern vacationing skiers. Over the last several years, the Company has begun to compete in certain international markets, with the U.K. market historically producing the highest levels of international skier visits.

Management believes that certain demographic trends and trends in the U.S. ski industry will be favorable for the Company's business outlook. The ''echo boom'' generation is of prime age for introduction to skiing and snowboarding. The trend toward consolidation is expected to permit larger, multiple resort companies to concentrate more of their marketing efforts on attracting new participants to the sport. Improved snowmaking technology and grooming techniques assure visitors better quality and more consistent conditions. High speed chair lifts also increase the quality of the experience by permitting more skiing during a resort visit. As an active family sport, skiing benefits from the special trends toward family vacationing and health consciousness. Finally, management believes its success with the first Summit Hotel program is directly related to the desire for affordable vacation property ownership among a growing population of skiers.

AMERICAN SKIING COMPANY RESORT OVERVIEW

Resort	Skiable terrain (acres)	Vertical drop	Trails	Lifts	Snowmaking coverage (percent)	Groomers	Lodges	1994–95 skier visits (000s)	1995–96 skier visits (000s)
Killington, Sherburne, Vermont	918	3,150	165	1 Gondola 2 Detachable 15 Fixed Grip 2 Surface	60	29	7	826	905
Sunday River, Newry, Maine	640	2,300	120	3 Detachable 12 Fixed Grip 1 Surface	92	11	4	535	589
Mount Snow, Haystack, Dover, Vermont	751	1,700	130	1 Detachable 20 Fixed Grip 3 Surface	84	13	6	461	553

AMERICAN SKIING COMPANY RESORT OVERVIEW—Continued

Resort	Skiable terrain (acres)	Vertical drop	Trails	Lifts	Snowmaking coverage (percent)	Groomers	Lodges	1994–95 skier visits (000s)	1995–96 skier visits (000s)
Sugarloaf Carrabassett, Valley, Maine	515	2,820	116	1 Gondola 1 Detachable 11 Fixed Grip 1 Surface	92	11	1	312	349
Sugarbush, Warren, Vermont	413	2,600	111	4 Detachable 4 Surface 10 Fixed Grip	74	9	5	331	373
Attitash, Bear Peak, Bartlett, New Hampshire.	214	1,750	45	1 Detachable 7 Fixed Grip 2 Surface	100	5	2	182	201
Subtotal—Retained resorts	3,451		687	2 Gondola 12 Detachable 75 Fixed Grip 13 Surface	80	78	25	2,647	2,970
Waterville Valley, Waterville Valley, New Hampshire.	255	2,020	54	1 Detachable 8 Fixed Grip 4 Surface	96	6	3	207	257
Mt. Cranmore, North Conway, New Hampshire.	190	1,167	36	1 Detachable 4 Fixed Grip 1 Surface	100	3	2	95	125
Subtotal—Resorts to be divested	445		90	2 Detachable 12 Fixed Grip 5 Surface	98	9	5	302	382
Total	3,896		777	2 Gondola 14 Detachable 87 Fixed Grip 18 Surface	82	87	30	2,949	3,352

Strategy

Invest in Ski Experience. Management believes that the most efficient way to increase resort visitation is to provide the highest quality skiing available. The Company intends to continuously improve the infrastructure at each resort, emphasizing modernization and introducing at the SKI resorts the snowmaking and grooming successfully implemented at the Company's other ski areas. Management expects to invest approximately $50 million in improvements in lifts, snowmaking, grooming and trail design over the next three years, of which approximately 70% is designated for SKI resorts.

Alpine Experience

The guests at Attitash/Bear Peak and Cranmore are very similar in relation to alpine experience. At Attitash/Bear Peak 92.5% ski, with 40.1% intermediate, and 6.1% snowboard, with 33.3% advanced. At Cranmore 94.3% ski, with 41.9% intermediate, and only 5.2% snowboard, with 40% being intermediate (Refer to Tables 1 (sports) and 3 (ability level) for comparison).

The average number of guests in a party at Attitash/Bear Peak and Cranmore is 6 and 5, respectively. Cranmore's lower guest count can be attributed to the higher percentage of their guests coming with their family as compared to Attitash/Bear Peak. At Cranmore 37.2% come with their family as compared to 30.1% at Attitash/Bear Peak. The guests at both mountains are more likely to come with friends than with family, groups or alone. A total of 39.0% of Attitash/Bear Peak and 34.0% of Cranmore guests come with their friends (Refer to Tables 2 (guest's party) and 4 (party size) for comparison).

More than half of the guests at both mountains are return customers, with 65% at Attitash/Bear Peak and 61% at Cranmore (Refer to Table 5 for comparison of return guests). Overall, the guests are using the traditional lift ticket rather than the smart ticket or season pass. The traditional lift ticket is being used more at Cranmore (72.0%) than at Attitash/Bear Peak (64.3%) by the guests. Of the guests that have been to Attitash/Bear Peak, the traditional lift ticket is the choice by 62.6% of the guests as compared to only 24.8% choosing the smart ticket. Of the guests that have never been to Attitash/Bear Peak, 67.5% use the traditional ticket and 27.8% use the smart ticket. Cranmore guests, whether return skiers/riders or not, are using the traditional lift ticket more often than Attitash/Bear Peak guests.

A higher percentage of Cranmore guests decides on which ski area to visit because of a positive past experience than did the Attitash/Bear Peak guests, with 44% and 35%, respectively. The second important reason was the convenience to where the guests lived, which represented about a quarter of the guests at both mountains (Refer to Table 16).

The average number of times skied/rode last year was about thirteen times for both Attitash/Bear Peak and Cranmore guests. Attitash/Bear Peak guests skied/rode at Attitash a total of 280 times, followed by Sunday River (159 times), Wildcat (109 times), Cranmore (94 times) and Loon (83 times). On average, the guests skied/rode at Attitash/Bear Peak 9 times, followed by Maine areas 6 times and Out West 5 times. The guests at Cranmore skied/rode 86 times at Cranmore and 80 times at Attitash/Bear Peak. Sunday River was skied/rode 62 times by the guests and Wildcat 45 times. On average, Cranmore guests skied/rode 8 times in Maine, 7 times at Cranmore and 6 times Attitash/Bear

Peak (Refer to Tables 6 (number of visits) and 7 (areas skied last year) for comparison.

The guests at both mountains have similar music taste. Soft Rock was the favorite format for guests at Attitash/Bear Peak (48.4%) and Cranmore (46.3%). This was followed by Hard Rock, which represented 18.0% at Attitash/Bear Peak and 13.2% at Cranmore (Refer to Table 9 for radio format comparison).

A total of 74.1% of Attitash/Bear Peak guests did not go night skiing last year and only 12.8% went once. A total of 65.8% of Cranmore guests did not go night skiing and even fewer, 9.8%, went only once (Refer to Table 8 for comparison).

The Bear Peak experience for both Attitash/Bear Peak and Cranmore guests was not satisfying. The guests were only satisfied with the ease of riding the lift and all other respective categories received satisfaction ratings less than 8 (Refer to Table 10 for comparison of Bear Peak experience).

Guest Experience

In comparing the guests' experience at Attitash/Bear Peak with Cranmore, many similarities occur. However, a number of differences also appear. The percentage of guests staying overnight is higher at Attitash/Bear Peak than at Cranmore, 86.1% compared to 78.2%, respectively (Refer to Table 11). The guests that are staying overnight are primarily staying at a friend's home/condominium or either at a home/condominium they rent. A total of 32% of Attitash/Bear Peak guests stay at a friends and 29% stay in a home/condominium they rent. A total of 29% of Cranmore guests stay with friends and 27% stay in a home/condominium they rent (Refer to Table 12 for where visitors are staying). A higher percentage of Attitash/Bear Peak guests (55%) stay over for two nights than Cranmore guests (47%) (Refer to Tables 13 for length of stay and 14 for days skied/rode during trip).

The best way to reach the Attitash/Bear Peak and Cranmore guest is through direct mail, followed by the radio. A total of 44.5% of the Attitash/Bear Peak guests and 50.8% of Cranmore guests believed that direct mail was the best way to reach them. This compares to radio, which represents 30.9% of Attitash/Bear Peak guests and 25.4% of Cranmore guests (Refer to Table 15). *Ski* magazine was the most frequently read magazines for guests at both mountains, but it was only rarely read (Refer to Table 17).

Program Participation

A high percentage of Attitash/Bear Peak and Cranmore guests do not have an Edge Card (68.5% and 69.8%, respectively). In addition, a high percentage of the guests at both mountains are not familiar with the Edge Care (Refer to Table 18 and Table 19).

The primary reason why Attitash/Bear Peak and Cranmore guests did not shop at CriSports was because they did not need anything (Refer to Tables 20 and 21).

The traditional lift ticket is used more at Cranmore (72.4%) than at Attitash/Bear Peak (64.3%). As would be expected, the smart ticket is used more at Attitash/Bear Peak (26.1%) than at Cranmore (19.8%). Over half (52.6%) of the Attitash/Bear Peak guests and 43.6% of Cranmore guests selected their ticket because of the better perceived value (Refer to Tables 22, 23a and 23b for comparison of lift ticket and explanation for lift ticket).

Only 37.3% and 31.8% of Attitash/Bear Peak and Cranmore guests, respectively, visit Attitash/Bear Peak during the summer (Refer to Table 24). Cranmore guests use the Alpine Slide and Water Slide 86% and 80% of the time, respectively. Attitash/Bear Peak guests use the Alpine Slide and Water Slide only 56% and 45% of the time, respectively (Refer to Table 25 for a comparison of activities participated in).

A high percentage (85%) of the guests at both mountains have not taken more than 1 or 2 lessons in the past five years. This might be attributed to the high percentage of intermediate and advanced skiers/riders at both mountains. Roughly 40% of the guests at both mountains would take a lesson if special rates were offered (Refer to Tables 26 and 27 for comparison of lessons and motivations for taking lessons).

Guest Information

The gender distribution at Attitash/Bear Peak is 60.7% male. This compares to Cranmore, where 53.6% of the guests are males. Approximately half of the guests at Cranmore are married with children and 31.9% are single with no children. Of the Cranmore guests that have children, 47.8% have two children and 33.7% have only one child. A lower percentage (42.1%) of guests at Attitash/Bear Peak are married with children than at Cranmore, but a higher percentage (39%) are single with no children. Of the Attitash/Bear Peak guests that have children, 53.5% of guests have two children and 24.1% have one child. The average age for children at both mountains is ten years old. The average age of guests at Attitash/Bear Peak is 36 years old as compared to 38 at Cranmore (Refer to Tables 30 and 31 for comparison of children's age and visitor's age).

The average household income for Cranmore guests is higher than Attitash/Bear Peak guests. A total of 26.5% of Cranmore guests have an income of $50,000 to $75,000 as compared to 21.6% of Attitash/Bear Peak guests. A total of 27.0% of Attitash/Bear Peak guests have an income of $20,000 to $50,000 as compared to 24.7% of Cranmore guests (Refer to Table 32 for comparison of household income).

There is a higher percentage of Attitash/Bear Peak guests that own vacation property than Cranmore guests (30.8% and 25.8%, respectively) (Refer to Table 33). A total of 31.8% of the Attitash/Bear Peak guests that own vacation property have a household income of $125,000 and more. Approximately a third of Cranmore guests have a household income of $75,000 to $100,000. A higher percentage (56.9%) of Cranmore guests owns a single family home than Attitash/Bear Peak guests (45%). Thirty-three percent of Attitash/Bear Peak guests own a condominium compared to only fifteen percent of Cranmore guests (Refer to Tables 34 for comparison of type vacation property owned and 35 for where vacation property is located and 36 represents the interest of obtaining information pertaining to vacation ownership). Approximately a quarter of the guests at both mountains are interested in information about vacation ownership.

Guests that are skiing/riding at Attitash/Bear Peak and Cranmore are primarily traveling from Massachusetts, with 69% and 65%, respectively. Cranmore attracts more guests from New Hampshire (16%) than Attitash/Bear Peak (7%). Also, more guests are going to Cranmore from Maine (5%) than to Attitash/Bear Peak (2%) (Refer to Table 37 for comparison of the states where guests are coming from).

Table 38 and Table 39 represent the likelihood of returning and the potential of recommending the ski area to a friend. Over half of the guests are likely to return next year and most every guest will recommend the ski area to a friend.

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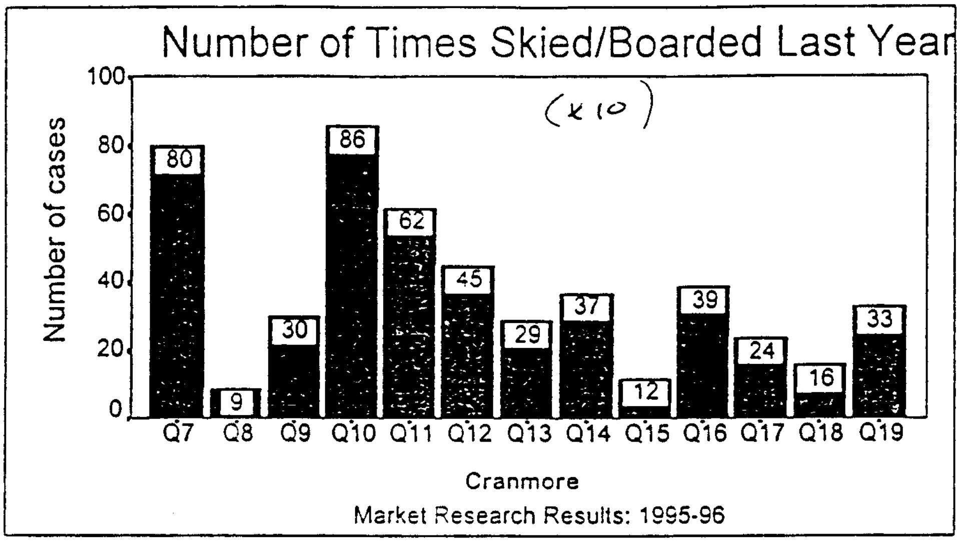
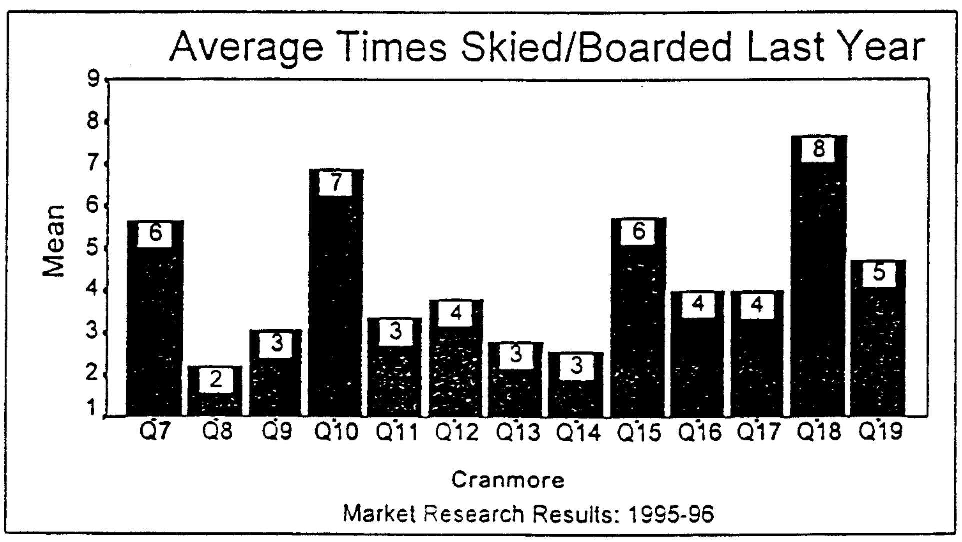
In total, Cranmore guests skied/rode at Cranmore a total of 86 times last year. Attitash was the next most frequented area for Cranmore guests to ski/ride at last year (80 times). Sunday River, Wildcat and Other NH areas followed with 62, 45 and 39 times, respectively.



Q7: Attitash
Q8: Sugarbush
Q9: Loon
Q10: Cranmore
Q11: Sunday River
Q12: Wildcat
Q13: Waterville
Q14: Bretton Woods
Q15: Out West
Q16: Other NH
Q17: VT
Q18: ME
Q19: MA

The average number of times Cranmore guests skied/rode at Cranmore was 7 times last year. Ski areas in Maine had an average of 8, while Attitash, as well as areas out West, averaged 6.



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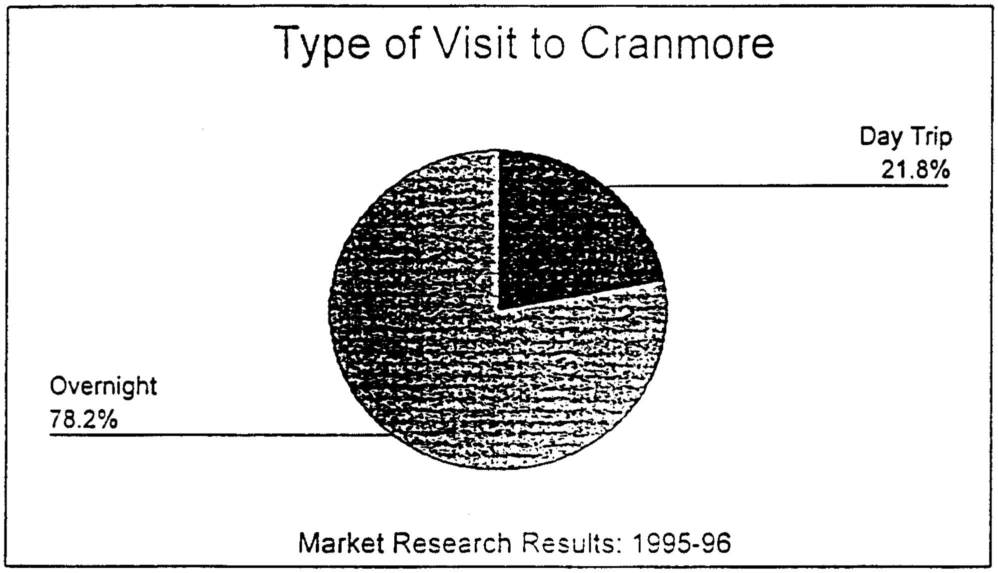
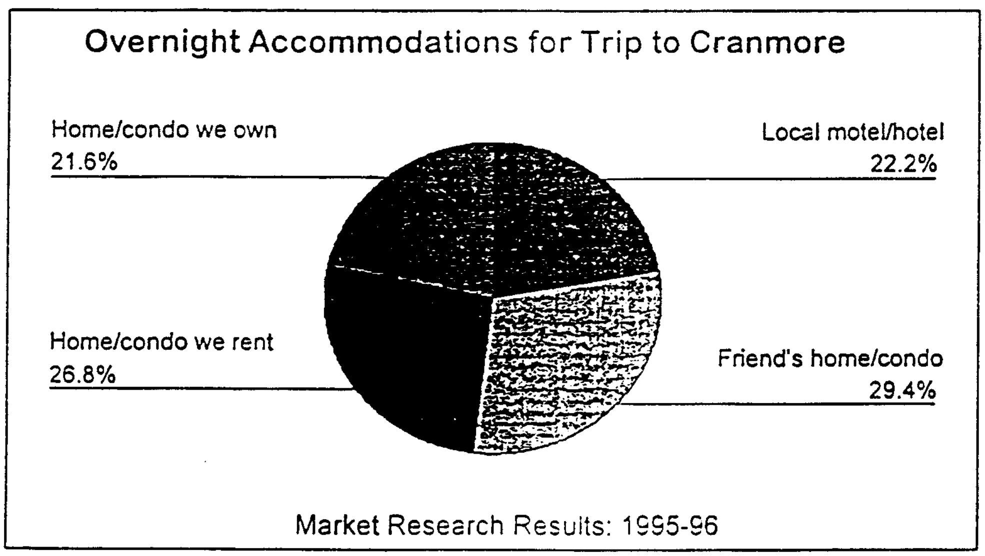
Q17: VT
Q18: ME
Q19: MA

Cranmore Guest Experience

78.2% of Cranmore guests are staying overnight.

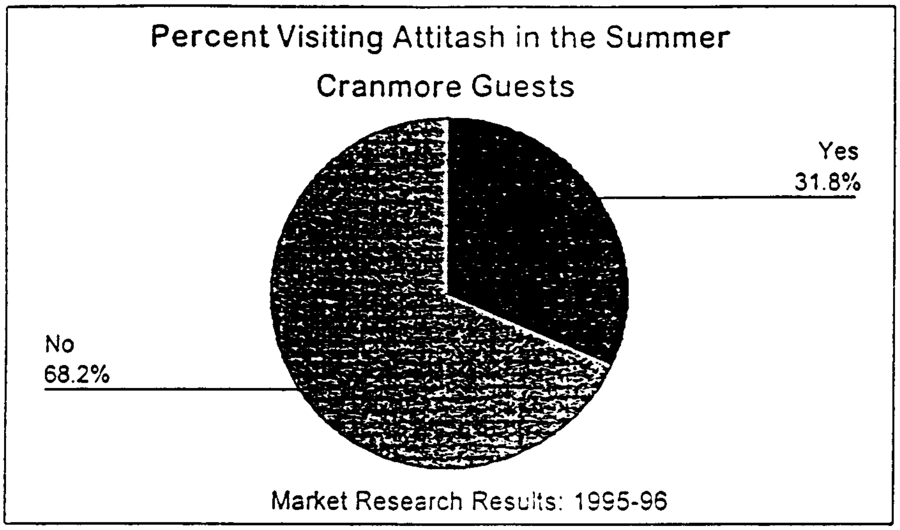


29.4% of the Cranmore guests that are staying overnight are staying at a friend's home or condominium. 26.8% are staying at a home or condominium they rent.

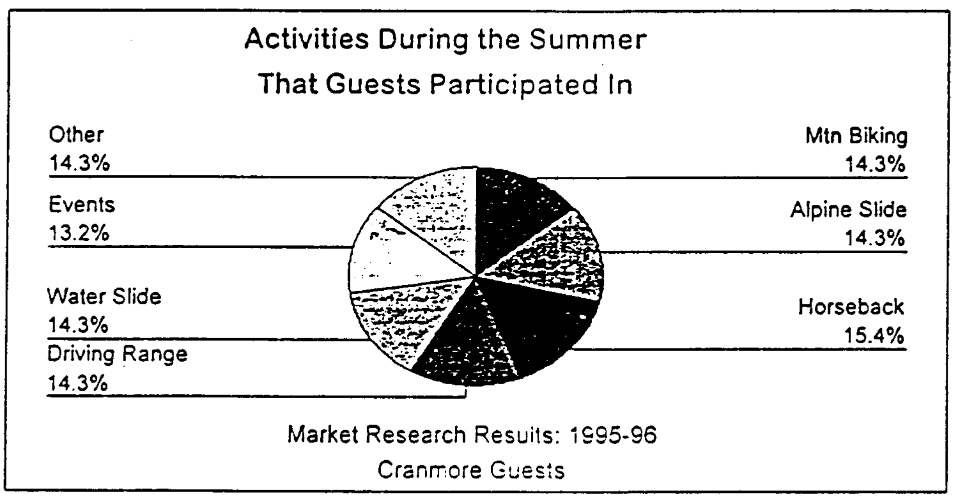


About half of the Cranmore guests that are staying overnight are only staying over for two nights. 39.7% of those staying overnight for 2 nights are staying at a friend's home and 25.0% are staying at home they rent (Refer to Crosstab 6: Where the guests are staying overnight and How many nights).

31.8% of the Cranmore winter guests visit Attitash during the summer.

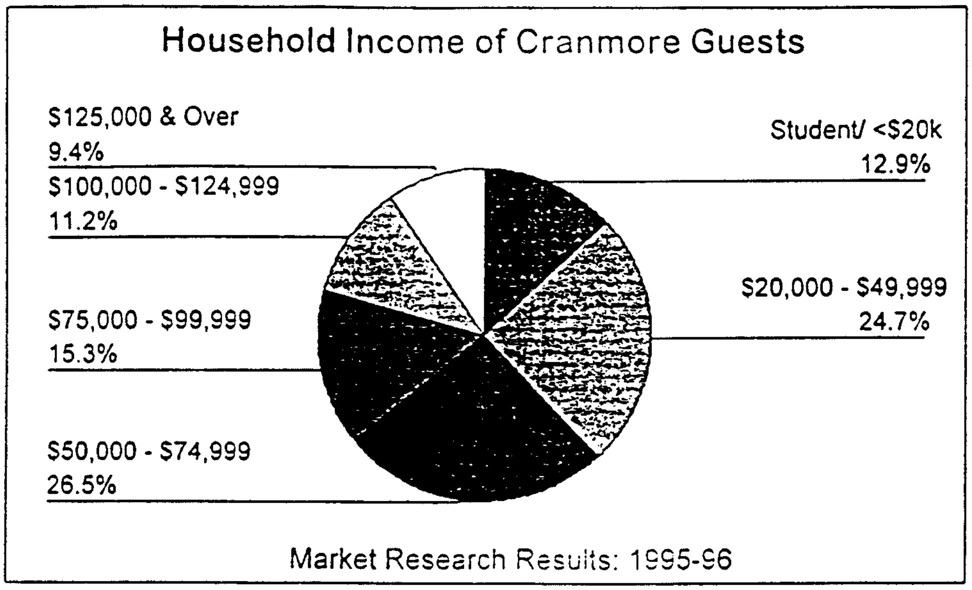


Overall, the guests that visit Attitash during the summer are participating almost equally in all of the following activities: Events, Water Slide, Mountain Biking, Alpine Slide, Horseback Riding and the Driving Range. Horseback Riding has the highest percent, 15.4%, and Events represent the lowest percent, 13.2%.

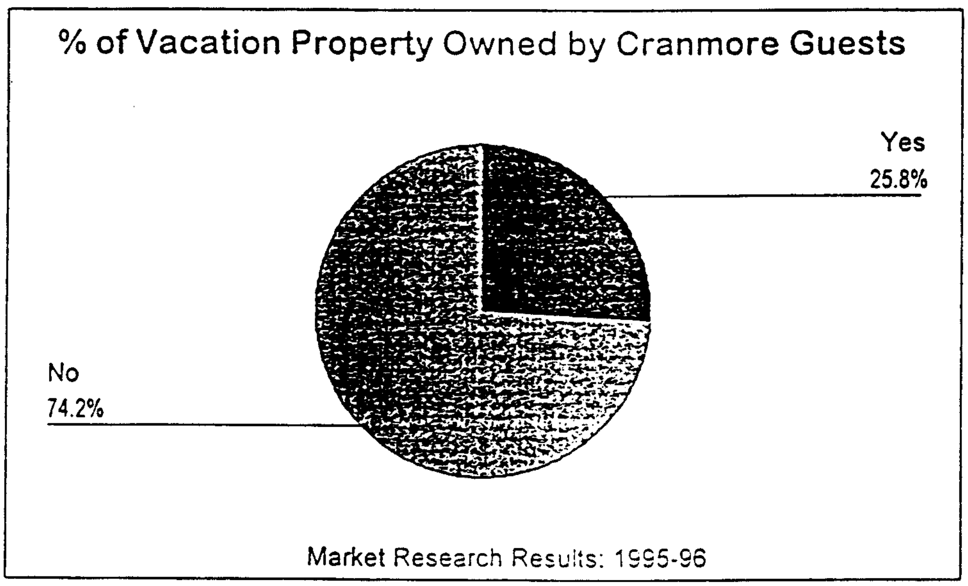


Approximately 88.0% of the Cranmore guests rate their ability level at least intermediate. A high percentage (83.9%) of the guests at Cranmore have not taken more than 1 or 2 lessons in the past 5 years (Refer to Crosstab 11: Ability level and Participation in lesson).

26.5% of the guests make $20,000 - $50,000 and 24.7% make $20,000 - $49,999.

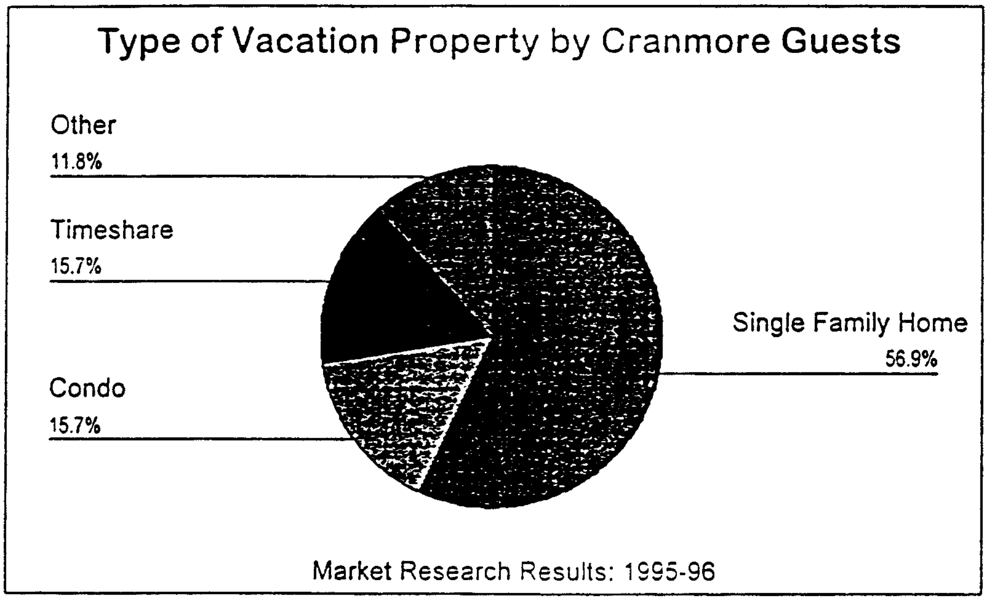


A quarter of the guests own vacation property.

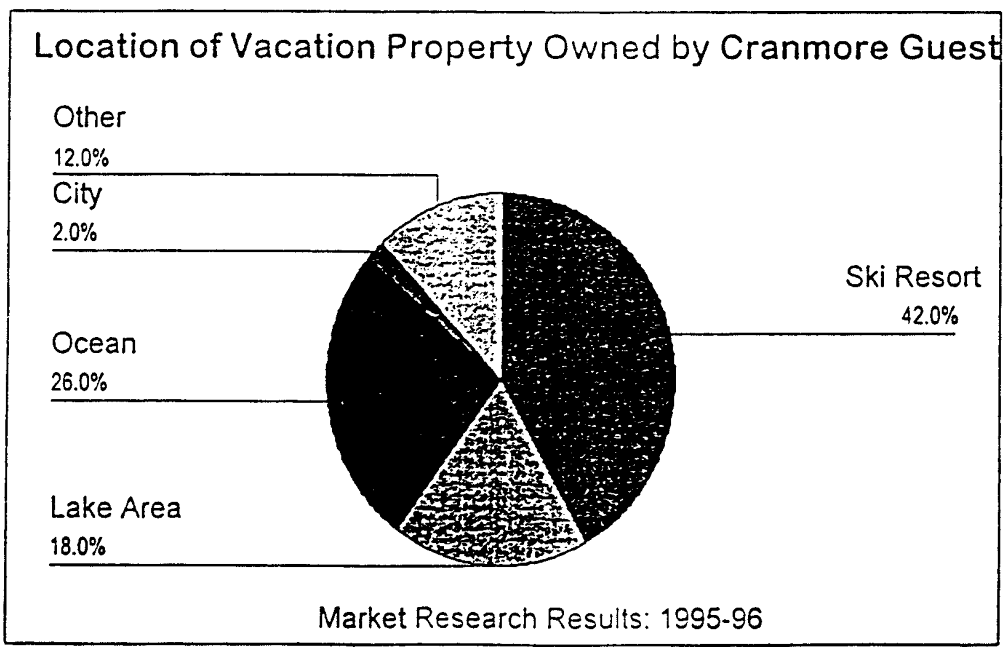


Of the 26% that own vacation homes, 31.8% have a household income of $75,000 to $99,999 and 29.5% have a household income of $50,000 to $74,999 (Refer to Crosstab 14: Household income and Vacation property owners).

Of the guests that own vacation property, 56.9% own single family homes and 15.7% own a condominiums/townhouse and 15.7% own a timeshare.



Of the guests that own vacation property, 42% are located at a ski resort.



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A total of 71.1% are not interested in learning more about vacation ownership at Attitash/Bear Peak. Of the percent of guests that do not want information, 70.1% currently do not own vacation property (Refer to Crosstab 15:Interested in learning more about vacation ownership and Own vacation property).

The majority of Cranmore guests are traveling from Massachusetts followed by New Hampshire (15.6%), Rhode Island (8.3%) and Maine (5.2%).

FREQUENCY OF WHERE GUESTS ARE COMING FROM

Value label	Value	Frequency	Percent	Valid percent	Cum. percent
	MA	117	60.9	60.9	60.9
	NH	30	15.6	15.6	76.6
	RI	16	8.3	8.3	84.9
	Missing	12	6.3	6.3	91.1
	ME	10	5.2	5.2	96.4
	CT	2	1.0	1.0	97.4
	NJ	2	1.0	1.0	98.4
	NY	2	1.0	1.0	99.5
	OH	1	.5	.5	100.0
Total		192	100.0	100.0	

16.7% of the guests come from the Boston area and 12.5% come from Northern Massachusetts

FREQUENCY OF 3-DIGIT ZIP CODES OF WHERE GUESTS ARE COMING FROM

Value label	Value	Frequency	Percent	Valid percent	Cum. percent
Boston Mass	021	32	16.7	16.7	16.7
NE Mass	019	24	12.5	12.5	29.2
SE N.H	038	19	9.9	9.9	39.1
	Missing	13	6.8	6.8	45.8
Providence R.I	028	13	6.8	6.8	52.6
SE Mass	020	9	4.7	4.7	57.3
NE R.I	027	9	4.7	4.7	62.0
NE Mass	018	8	4.2	4.2	66.1
SE Mass	023	8	4.2	4.2	70.3
South N.H	030	7	3.6	3.6	74.0
Cape Mass	026	6	3.1	3.1	77.1
Worcester Mass	015	5	2.6	2.6	79.7
Central Mass	017	5	2.6	2.6	82.3
South M.E	039	5	2.6	2.6	84.9
	040	4	2.1	2.1	87.0
	014	3	1.6	1.6	88.5
	029	3	1.6	1.6	90.1
	010	2	1.0	1.0	91.1
	016	2	1.0	1.0	92.2
	025	2	1.0	1.0	93.2
	031	2	1.0	1.0	94.3
	022	1	.5	.5	94.8
	032	1	.5	.5	95.3
	033	1	.5	.5	95.8
	041	1	.5	.5	96.4
	064	1	.5	.5	96.9
	069	1	.5	.5	97.4
	086	1	.5	.5	97.9
	088	1	.5	.5	98.4
	148	1	.5	.5	99.0
	380	1	.5	.5	99.5
	451	1	.5	.5	100.0
Total		192	100.0	100.0	

Refer to Appendix B for the location of Cranmore guests by 3-digit zip codes.

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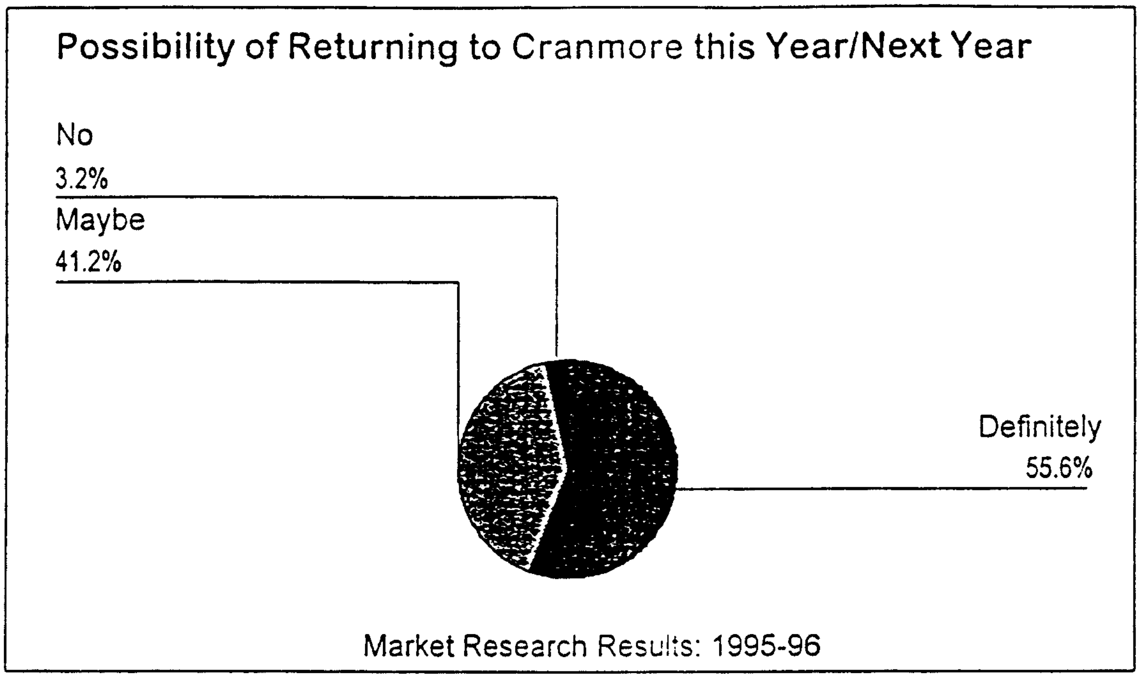
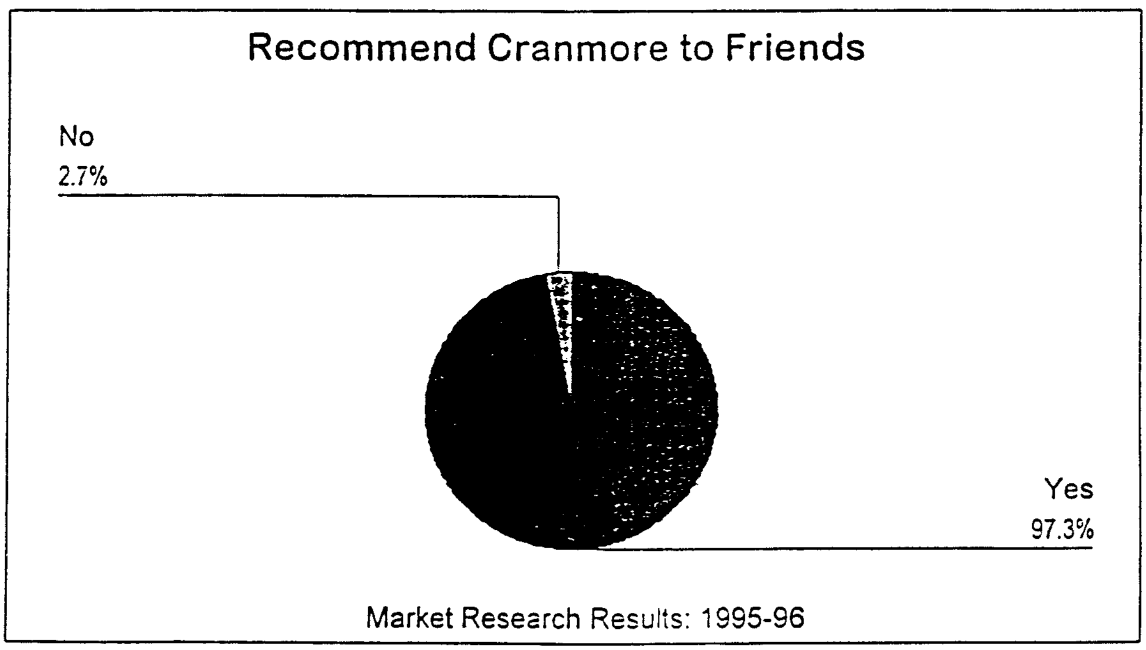
55.6% will definitely return next year to Cranmore.



97.3% will recommend Cranmore to friends.



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The NSAA ECS 1995/96 chart was not able to be reprinted in the Federal Register, however, it may be inspected in Suite 215, U.S. Department of Justice, Legal Procedures Unit, 325 7th St., N.W., Washington, D.C. at (202) 514–2481 and at the Office of the Clerk of the United States Court for the District of Columbia.

95–96 Ski Season Study is not complete per Larry Goss. 7/17/96.

Items with an asterisk are from 95–96 study, all other information is from 94–95 study.

* 2,310,000 Skier Days

State of Origin:
- 86% residents of New England
- 55% residents of Massachusetts
- 21% residents of New Hampshire
- 4% residents of Rhode Island
- 3% residents of Maine/Connecticut

* Decision Maker:
1. Male age 35–45
2. Joint decision male/female
3. Female

Principal Income:
- 37% $75,000 & above
- 31% $50–75,000

Skill level:
- 42% considered themselves Intermediate
- 33% considered themselves Advanced
- 9% considered themselves Expert

Travel Party Characteristics:
- 41% Families
- 40% Families/Friends

Most Popular Activities:
- 85% Alpine skiing
- 31% Shopping

* Spending:
- Total spending on ski trips to the State, $185,000,000

Key Words Used to Describe New Hampshire Skiing:
1. Beautiful
2. Scenic
3. Friendly

The chart on page 38 of the National Skier Opinion Survey was not able to be reprinted in the Federal Register, however, it may be inspected in Suite 215, U.S. Department of Justice, Legal Procedures Unit, 325 7th St., N.W., Washington, D.C. at (202) 514–2481 and at the Office of the Clerk of the United States Court for the District of Columbia.

SKI–NH, Inc., Skier Survey Results, 1994–5 Season

October 1995

The Institute for New Hampshire Studies, Plymouth State College, Plymouth, NH 03264

Northern Economic Planners, Concord, NH 03301

Introduction

SKI–NH, Inc. retained The Institute for New Hampshire Studies at Plymouth State College to undertake a study of the impact of the ski areas in New Hampshire on the state's economy. This economic impact study included two surveys: a survey of the skiers and a survey of the ski areas. This report evaluates the compilations of the returned skier survey forms and is intended to help SKI–NH with its marketing program. There also will be a separate economic impact report that will make use of both surveys and additional information.

During the 1994–5 skiing season, seven alpine ski areas agreed to provide attendance information on a monthly basis. This information is the basis for the estimate that 72 percent of all skier days during the 1994–5 season occurred between November 1994 and February 1995 and 28 percent were during the months of March and April 1995. When this monthly attendance data is compared with the compilation of the returned survey forms, it became obvious that Gunstock Ski Area was over represented among the returned forms.

The information which follows in this report is based on the assignment of smaller weights to Gunstock returned forms versus those for other ski areas and larger weights for the winter season forms versus the spring season forms. As a result, the information which follows will be somewhat different from the compilation of all the returned survey forms which has been provided to SKI–NH.

Plymouth State College provided SKI–NH with 3,000 survey forms to distribute to skiers by the ski areas during the months of December through April. There were 461 useable forms returned, for a 15.4 percent return rate. This overall return rate was lower than anticipated. Almost 40 percent of the returned forms were from skiers who visited the state during the months of March and April. Over 44 percent of the forms were from skiers who had visited Gunstock, far higher than that ski area's share of the state's market. The skiers who visited Gunstock had somewhat different characteristics than those who skied at areas farther north. The spring season skiers also have slightly different characteristics than the winter season skiers. It was for these reasons that the returned forms were weighted, as outlined above, so that the reported results are more representative of the skiers who did visit the state's ski areas. Also, the U.S. Travel Data Center winter 1995 survey of travelers to New Hampshire has been used to adjust the ratio of day trip to overnight skiers and to increase average spending per day and per trip in both this report and in the impact study.

Attendance at Ski Areas

The information provided monthly by the seven ski areas as the season progressed, plus additional information on the entire season from other ski areas, currently indicates that there were 1.88 million alpine and cross-country skier days during the 1994–5 season. This is about 16 percent below the record setting 1993–4 season which had 2.24 million skier days. Month to month comparisons between these two seasons show that there was great variation in the rate of decrease among these months, with the greatest percentage declines for the months of January and April. Overall, the winter months were down about 14 percent from the previous year, but the spring months (March and April) were down by 20 percent from the previous year, due to the relatively warm and rainy spring weather.

The skier survey forms, state traffic count data and rooms and meals tax information indicate that skiers who own second homes and condominiums near ski areas had only a very small decline in visits to ski areas. Other skiers on overnight trips appear to have declined by about eight percent in number during the winter, with a larger decrease during the spring. The largest decrease appears to have been for day trip skiers when the 1993–4 and 1994–5 skiing seasons are compared. The U.S. Travel Data Center survey of winter 1995 visitors to New Hampshire indicates a 6.8 percent increase in visitors to New Hampshire during winter 1995 in comparison with winter 1994, but with a 21 percent decrease in visitors on one day trips. New Hampshire DOT traffic counters show a 1.8 percent decrease for the those counters near ski areas, but a 4.1 percent increase for all counters state-wide.

State of Origin

Skiing in New Hampshire is primarily an activity for residents of New England. About 86 percent of all skiers are residents of the six New England states. An additional five percent came from the three Mid-Atlantic states and three percent came from Canada. Almost six percent of the ski parties came from the other 41 states and just over one percent came from outside North America. Canadian skiers are far more likely to come during the spring than the winter. It was a surprise that as many Canadians came this year, due to the unfavorable currency exchange rate. The second surprise was the relatively large number of ski parties from Florida in both the winter and the spring. As in other years, spring skiers are more likely to be from outside the Northeastern United States than winter skiers.

Table 1 shows the states and provinces which provide at least one percent of all skiers visiting New Hampshire. The other states from which skiers returned forms during the winter months included: Alabama, Arizona, Maryland, Michigan, Ohio, Pennsylvania and Virginia. The other states from which skiers returned forms during the spring months were: Michigan, North Carolina, Ohio, Virginia and Vermont. Each of these states had less than one percent each of the returned forms. The U.S. Travel Data Center survey of winter 1995 visitors to New Hampshire found 82 percent were from New England and 11 percent from the three Middle Atlantic States. Canadians and other foreigners were not surveyed.

TABLE 1.—PERCENT OF SKIERS BY STATE OF ORIGIN

State/province	Winter months (percent)	Spring months (percent)	Entire season (percent)
Connecticut	3.1	2.2	2.8
Florida	2.7	2.1	2.5
Maine	3.8	1.0	3.0
Massachusetts	51.7	63.2	54.9
New Hampshire	22.2	16.4	20.6
New Jersey	1.3	3.1	1.8
New York	2.7	1.0	2.2
Rhode Island	5.4	1.4	4.3
Nova Scotia	0.4	2.1	0.9
Ontario	0.5	5.2	1.8
Other states	4.6	2.3	4.0
Outside N Am	1.6	0.0	1.2
Total	100.0	100.0	100.0

The Trip Decision-Maker

The decision-maker for the skiing trip was most often male and between the ages of 35 and 45. Table 2 shows the age break-out for the trip decision-maker and Table 3 shows the sex of the decision-maker. Table 4 shows the household income of the trip decision-maker. The trip decision-maker during the winter months was slightly younger in average age, in comparison with the spring months' decision-maker. This may reflect the fact that younger skiers appear to be more likely to take day trips at the more southerly ski areas, which are not open as long during the spring months as the more northerly ski areas. A joint decision regarding the ski trip appears to be more common for the spring months than for the winter months, but mostly due to a reduction in the proportion of females who make the trip decision in the spring.

TABLE 2.—AGE OF TRIP DECISION-MAKER

Age group	Winter (percent	Spring (percent)	Season (percent)
18–24	7.5	6.5	7.2
25–34	14.5	17.5	15.3
35–44	43.3	43.5	43.4
45–54	27.1	23.6	26.1
55–64	5.7	5.7	5.7
65+	1.9	3.2	2.3

TABLE 3.—SEX OF TRIP DECISION-MAKER

Sex	Winter (percent)	Spring (percent)	Season (percent)
Male	40.3	38.7	39.9
Female	28.2	21.4	26.3
Joint	31.5	39.9	33.9

The share of all skiers in the income groups over $75,000 was higher for the spring skier than for the winter skier. Household income for skiers are higher (on-average) than visitors to New Hampshire during the other seasons of the year and are significantly higher than the average household income for the state's residents.

TABLE 4.—HOUSEHOLD INCOME

Income group	Winter (percent)	Spring (percent)	Season (percent)
<$20,000	4.7	2.8	4.2
$20–35,000	9.7	9.9	9.8
35–50,000	15.9	22.9	17.9

TABLE 4.—HOUSEHOLD INCOME—Continued

Income group	Winter (percent)	Spring (percent)	Season (percent)
50–75,000	34.0	23.9	30.8
75–100,000	16.5	20.1	17.5
100,000+	19.2	21.2	19.8

The level of capability for skiers appears to be different for the winter and the spring. The spring months skier is more likely to be an expert and less likely to be a novice or beginning skier in comparison with the winter months skier. Table 5 shows the level of capability of the trip decision-maker.

TABLE 5.—SKIING CAPABILITY LEVEL

Level	Winter (percent)	Spring (percent)	Season (percent)
Novice	19.3	9.2	16.5
Intermediate	40.7	44.1	41.6
Advanced	33.5	32.4	33.2
Expert	6.5	14.3	8.7

The trip decision-maker takes an average of 7.0 skiing trips to New Hampshire if they returned a survey form during the winter and 7.3 skiing trips to New Hampshire if they returned the form during the spring. Those skiers who returned the forms indicated that 65 percent of them plan to visit the state on vacation during the summer and 53 percent of them plan to visit during the fall. These relatively high percentages may reflect the fact that a significant share of those who returned the forms have a second home, condominium or time-share unit or friends or relatives in New Hampshire, as will be discussed later in this report.

Travel Party Characteristics

Most people usually ski with their family members and/or friends. Only a small share of skiers in New Hampshire are part of a group party (such as a ski club), probably about four percent of all skiers. Very few people are on a skiing trip by themselves—less than two percent. Table 6 shows the make-up of ski parties based on the returned survey forms. The average size of the travel party in 1994–5 is 14 percent larger than was reported in the 1992–3 season survey. As noted above, a large share of those parties which returned forms were on overnight trips than is estimated for all ski trips. Overnight ski parties have larger sized travel parties (on average) than do those on day trips.

When U.S. Travel Data Center information is considered, the average travel party size is estimated to be 4.79 for the winter, and 4.62 for the spring and 4.74 for the season. This is because day trip parties are usually smaller in size and are less likely to be clubs and organizational trips.

TABLE 6.—TRAVEL PARTY CHARACTERISTICS

Party make-up	Winter (percent)	Spring (percent)	Season (percent)
Family only	42.2	37.6	40.9
Friends only	12.4	15.4	13.2
Family & Friends	40.1	41.0	40.4
Clubs & Groups	3.5	4.2	3.7
Alone	1.3	1.4	1.3
Other	0.5	0.4	0.5
Average size	5.14	4.87	5.06

Activities While on This Trip

The forms for this skier survey were handed out at both alpine and cross country ski areas. Alpine skiing was both the most important activity and the most common activity undertaken while on this trip. Table 7 shows the most important activity which was undertaken on the trip, while Table 8 shows the second most important activity. It appears that alpine skiers engaged in a variety of other outdoor activities, shopping and entertainment while on their trip, with shopping ranked highest of the second most important activities (see Table 8). Those who indicated that visiting friends and relatives or attending business meetings or a conference as the most important activity were very likely to have alpine skiing as their second most important activity.

TABLE 7.—MOST IMPORTANT ACTIVITY

Activity	Winter (percent)	Spring (percent)	Season (percent)
Alpine ski	82.0	92.8	85.0
Snowboard	1.5	1.1	1.4
X-country ski	4.0	0.5	3.0
Snowmobiling	0.0	0.0	0.0
Other Outdoor	1.1	1.1	1.1

TABLE 7.—MOST IMPORTANT ACTIVITY—Continued

Activity	Winter (percent)	Spring (percent)	Season (percent)
Shopping	1.1	0.0	0.8
Indoor Rec/Ent	0.9	0.0	0.6
Visit Frnd/Rel	7.9	4.0	6.8
Business trip	1.5	0.5	1.2

TABLE 8.—SECOND MOST IMPORTANT ACTIVITY

Activity	Winter (percent)	Spring (percent)	Season (percent)
Alpine ski	17.1	11.0	15.4
Snowboard	8.0	19.2	11.1
X-country ski	9.3	4.1	7.8
Snowmobiling	2.9	0.3	2.2
Other Outdoor	8.6	5.4	7.7
Shopping	27.2	40.5	30.9
Indoor Rec/Ent	12.1	9.5	11.4
Visit Frnd/Rel	14.2	10.1	13.1
Business trip	0.7	0.0	0.5

Table 9 shows the activities which those completing the survey forms indicated that they participated in while they were on this trip. Alpine skiing, cross country skiing, snowboarding and other outdoor recreation (hiking, skating, snowmobiling, ice fishing, etc.) were all important outdoor activities. Shopping, indoor entertainment and visiting friends and relatives were other important trip activities. Cross country skiing and other outdoor activities were more common as important activities during the winter months than for the spring, most likely due to the lack of snow at cross country ski areas and a lack of safe ice on lakes during the spring months of 1995.

TABLE 9.—PARTICIPATED IN THIS ACTIVITY

Activity	Winter (percent)	Spring (percent)	Season (percent)
Alpine ski	92.6	98.6	94.3
Snowboard	8.8	11.1	9.2
X-country ski	17.5	9.5	15.3
Snowmobiling	4.4	6.4	5.0
Other Outdoor	22.5	14.3	20.2
Shopping	53.6	52.8	53.3
Indoor Rec/Ent	28.2	21.2	26.2
Visit Frnd/Rel	24.9	21.0	23.8
Business trip	2.9	3.1	3.0

Accommodations for Multi-Day Trips

Ski parties which responded to the skier survey were very likely to be on a multi-day trip. It appears that 67 percent of all winter ski trip parties responding were on a multi-day trip and that 71 percent of the spring season parties responding were on such a trip. This averages out to 68 percent for the season, for those parties that responded. These percentages are estimated as this section of the survey form was not completely filled out by all respondents.

For those parties which did stay overnight, the average stay was relatively lengthy. Winter month overnight ski parties stayed an average of 5.24 nights, compared to an average of 3.72 nights in the 1992–3 season and spring overnight ski parties stayed an average of 6.24 nights, compared to an average of 3.03 nights in the 1992–3 season. The average for the entire season was 5.52 nights for overnight ski parties, compared to an average of 3.49 nights in the 1992–3 season. While the largest number of parties on overnight trips stayed for only two nights, a significant share of ski groups stayed for seven nights or longer. The average stay for all ski parties (including day trips) for those responding to the survey was 3.53 nights during the winter months and 4.43 nights for the spring months. This produced an average of 3.78 nights for all trips for the season.

The U.S. Travel Data Center information for New Hampshire indicates that skiers on overnight trips were far more likely to complete the INHS survey form than skiers on day trips. As a result, it is estimated that overnight trip skiers were 58 percent of all skiers days, up from 47 percent during the 1992–3 season, but below the 68 percent figure for those parties which returned the forms. When this assumption of 58 percent of all skiers days by overnight visitors is used, then the average stay increases to 3.63 nights for the winter, 5.59 nights for the spring and 4.18 nights for the season. These averages for 1994–5 compare with 1.72 nights for winter 1992–3; 1.90 nights for spring 1993 and 1.78 nights for the 1992–3 season—when a larger share of all skiers were on day trips.

Table 10 shows the percentage of overnight ski parties staying at each different type of accommodation. In contrast, Table 11 shows the share of length of stay spent at each type of accommodation. A comparison of Tables 10 and 11 shows that the shortest visits were by those who stayed at motels, hotels and resorts and at inns and bed and breakfast establishments. This is the case as the percentage share of length of stay in Table 11 is less than the percentage staying at this type of accommodation as shown in Table 10. Those parties which stayed the most nights were in second homes or camping in RV's. Parties staying in a condominium (owned or rented) or staying at a place owned by a friend or relative were near the average in terms of length of stay. Spring season skiers were more likely to be attracted to stay at a hotel, motel, resort, inn and bed and breakfast and less likely to be camped in an RV than the winter season skier. Spring skiers were more likely to stay longer than winter skiers.

TABLE 10.—STAYED AT THIS TYPE OF ACCOMMODATION

Type	Winter (percent)	Spring (percent)	Season (percent)
Motel/resort	25.2	33.8	27.6
B&B/Inn	5.6	8.8	6.5
Second home	14.9	11.8	14.0
Condominium	22.4	17.8	21.1
Friend/Rel	26.8	24.6	26.2
Other*	5.1	3.2	4.6

*Most in the ''Other'' category were camping.

TABLE 11.—SHARE OF LENGTH OF STAY AT THIS TYPE OF ACCOMMODATION

Type	Winter (percent)	Spring (percent)	Season (percent)
Motel/resort	15.4	27.4	18.5
B&B/Inn	2.8	3.2	2.9
Second home	20.2	25.5	21.7
Condominium	23.8	18.3	22.6
Friend/Rel	25.2	23.3	24.5
Other*	12.6	2.3	9.8

*Most in the ''Other'' category were camping.

Compared with the 1992–3 season, those on overnight trips in 1994–5 were far more likely to be staying in a second home, property of a friend or relative or to be camping. Stays at motels, resorts and rented condominums were fewer during the 1994–5 season than for the 1992–3 season. The U.S. Travel Data Center information for winter 1995 on type of accommodations used was consistent with the information provided by the skiers. As those who stay at hotels, motels and resorts stay for a shorter period of time than other overnight visitors, their decrease in number is a second reason (after the reduction in day trips) for the increase in the average length of stay by skiing parties during the 1994–5 season in comparison with the 1992–3 season.

Travel Party Spending

The average spending per travel party from those parties which responded is shown in Table 12, but has been adjusted upward to reflect travel spending reported for all winter 1995 visitors to New Hampshire by the U.S. Travel Data Center. Even with this adjustment, average spending per visitor day may appear to be low. The reason for this is that 54.3% fewer visitor days by ski parties were spent in paid overnight accommodations than was the case in 1992–3. This was because 49.3% of overnight visitors stayed in second homes, condominium or time share units and/or accommodations owned by friends and relatives. Spending at the ski area (Recreation in Table 12) was a relatively large share (31%) of all spending. Spending at grocery stores is also relatively high (5%) and reflects the relatively large share of overnight visitors who stayed in accommodations with kitchens.

TABLE 12.—AVERAGE TRAVEL PARTY SPENDING

Category	Winter	Spring	Season
Lodging	$384.34	$517.58	$421.65
Restaurants	406.50	529.76	441.01
Groceries	82.39	103.52	88.31
State Liquor	19.25	27.40	21.53
Transportation	82.05	121.78	93.17
Recreation	545.18	707.26	590.56
Shopping	203.94	299.89	230.81
Services & Other	33.27	24.36	30.78
Total	1756.92	2331.55	1917.82
Per person trip	366.79	504.66	404.60
Per visitor day	79.22	76.58	78.48

As noted previously, the average length of the spring skiing trip was longer than the winter trip. Thus, spending per party trip and per visitor trip was higher for the spring season, even though spending per visitor day is lower during the spring months than for the winter months.

Obtaining and Using Travel Information

The skiers were asked several questions to determine how they obtained and used information in order to plan and undertake the ski trip. Table 13 shows the single most important source of information used to plan and undertake the ski trip. Previous trips and advice from friends and relatives were the two most important sources. Snow phone information, ticket promotions and ski area brochures were also very important.

TABLE 13.—MOST IMPORTANT INFORMATION SOURCE USED

Source	Winter (percent)	Spring (percent)	Season (percent)
Prior trips	36.1	31.2	34.7
Friends/Rel	20.8	9.6	17.7
Snow phone	13.3	7.6	11.7
Ticket promotion	3.9	17.5	7.7
Ski area brochures	3.8	6.9	4.7
Newspaper story	3.8	3.5	3.7
NH Winter Vis. G.	3.2	2.7	3.1
Weather report	2.5	4.4	3.0
Magazine story	3.3	0.5	2.5
TV ad	2.5	1.7	2.3
Regional Guides	2.5	1.7	2.3
Newspaper ad	0.6	4.2	1.6
TV story	0.7	2.7	1.3
Radio ad	1.2	0.7	1.1
Radio story	1.3	0.4	1.0
SKI–NH Mag	0.6	1.5	0.9
Ski Show	0.0	1.7	0.5
Travel Agents	0.0	1.3	0.4
Magazine ad	0.0	0.2	0.1
Billboard ad	0.0	0.0	0.0

Table 14 shows the second most important source of information used in planning and undertaking the skiing trip. Previous trips and advice from friends and relatives are still the two most important sources of information used, but are relatively less important proportionally among the second most important sources. Those who selected one of these two as the most important source of information were very likely to name snow phones, weather reports, ski area brochures and ticket promotions as their second leading source of information.

TABLE 14.—SECOND MOST IMPORTANT INFORMATION SOURCE USED

Source	Winter (percent)	Spring (percent)	Season (percent)
Prior trips	12.1	20.8	14.5
Friends/Rel	11.8	14.6	12.6
Snow phone	10.9	9.2	10.4
Weather report	12.5	4.6	10.3
Ski area brochures	12.5	4.2	10.2
Ticket promotion	10.4	7.0	9.4
Newspaper story	6.0	7.1	6.3
Radio ad	6.1	6.2	6.1
NH Winter VIS.G.	2.9	2.1	2.7
TV ad	2.3	3.2	2.6
Radio story	2.3	3.2	2.6
Magazine story	1.4	4.2	2.3
Ski Show	1.6	2.6	1.9
SKI–NH Mag	1.6	1.9	1.7
Regional Guides	0.8	2.8	1.4
TV story	1.5	1.3	1.4
Magazine ad	1.4	1.5	1.4
Newspaper ad	0.8	3.0	1.4
Travel Agents	1.5	0.2	1.1
Billboard ad	0.8	0.0	0.6

Table 15 shows the percentage of responding parties which said that they made use of each of the various sources of information. Previous trips remained the most important source of information used. However, a much wider range of sources of information were used which may not have been the most important or second most important sources of information as listed in Tables 13 and 14. There were also differences between the winter and spring months in the importance of some of the types of information used, as in the previous tables. The largest differences between the winter and spring months in Table 15 for ticket promotions and SKI–NH Magazine, both of which were used more frequently during the spring months.

TABLE 15.—USED THIS INFORMATION SOURCE

Source	Winter (percent)	Spring (percent)	Season (percent)
Prior trips	69.6	77.4	71.8
Ski area brochures	36.6	36.6	36.6
Friends/Rel	38.0	30.4	35.9
Snow phone	34.8	34.3	34.7
Ticket promotion	19.2	31.5	22.6
Weather report	22.8	21.9	22.5
Newspaper story	19.1	22.4	20.0
NH Winter Vis. G.	20.3	16.9	19.3
Newspaper ad	18.2	20.2	18.8
SKI–NH Mag	14.1	27.9	18.0
Magazine story	16.5	18.7	17.1
Radio ad	13.5	18.9	15.0
Regional Guides	12.9	19.7	14.8
Magazine ad	14.9	13.5	14.5
TV ad	13.9	15.2	14.3
TV story	12.3	16.3	13.4
Radio story	10.4	13.5	11.3
Billboard ad	5.8	6.7	6.1
Ski Show	3.0	5.6	3.7
Travel Agents	2.1	3.2	2.4

The ''information source use index'' score in Table 16 is obtained by multiplying the most used source percentage by three, the second most used source percentage multiplied by two and the information source used percentage by one; then adding these scores and dividing by six. This provides a weighted score for each of the information sources used by winter and spring months and for the season.

The results of this process indicate that prior trips remain the most important/used source of information. During the winter months the second most important/used source is advice from friends and relatives, followed by snow phones. However, during the spring months the second most important/used source is ticket promotions, followed by advice from friends and relatives. There are other differences between winter and spring in the importance and use of the various information sources, although weather reports and ski area brochures tend to rank high for both winter and spring. SKI–NH Magazine, regional guides and radio advertisements were more frequently used during the spring months than during the winter months. The three lowest ranking sources for *both* winter and spring were: *ski shows, billboard advertising* and *travel agents.*

TABLE 16.—INFORMATION SOURCE USE INDEX

Source	Winter index	Spring index	Season index
Prior trips	33.7	35.4	34.2
Friends/Rel	20.7	14.7	19.0
Snow phone	16.1	12.6	15.1
Ski area brochures	12.2	11.0	11.9
Ticket promotion	8.6	16.3	10.8
Weather report	9.2	7.4	8.9
TV ad	9.2	4.5	7.9
Newspaper story	7.1	7.9	7.3
NH Winter Vis.G.	6.0	4.9	5.7
Radio ad	4.9	5.6	5.1
Magazine story	4.9	4.8	4.9
Newspaper ad	3.6	6.5	4.4
Regional Guides	3.7	5.1	4.1
SKI–NH Mag	3.2	6.0	4.0
Radio story	3.2	3.5	3.3
TV story	2.9	4.5	3.3
Magazine ad	3.0	2.9	3.0
Ski Show	1.0	2.7	1.5
Billboard ad	1.2	1.1	1.2
Travel Agents	0.9	1.3	1.0

The following table (Table 17) reorganizes the information shown in Table 16 by grouping the information sources by the level of control that the ski areas have over the design and use made of this information and its distribution. The average index score for the entire season is used to rank the information sources within these categories. For most of the information categories the ski areas either provide or produce the information directly or have other organizations provide it or distribute it on their behalf. This includes various types of media in which advertising occurs.

Skiers do make significant use of information which is produced directly by the ski areas in making trip decisions. Most day trip skiers also want up-to-date information as part of the trip decision process, as indicated by the importance of snow phones, weather reports and TV and radio advertising. Advice from friends and relatives and regional guides were also more likely to be sued by those on day trips. The information sources more likely to be used by skiers on overnight trips than those on day trips were: prior trips, ticket promotions, NH Winter Visitors Guide, SKI–NH Magazine and travel agents.

TABLE 17.—CONTROL OF INFORMATION SOURCE AND IMPORTANCE/USE BY SKI AREA

Source	Season use index
No Control Over Information Source:	
Prior trips	34.2
Friends/Relatives	19.0
Weather report	8.9
Indirect/Limited Control Over Information Source:	
Snow phone	15.1
Newspaper story	7.3
Magazine story	4.9
TV story	3.3
Radio story	3.3
Travel Agent	1.0
Direct/Significant Control Over Information Source:	

TABLE 17.—CONTROL OF INFORMATION SOURCE AND IMPORTANCE/USE BY SKI AREA—Continued

Source	Season use index
Ski area brochures	11.9
Ticket promotion	10.8
TV ad	7.9
NH Winter Visitors Guide	5.7
Radio ad	5.1
Newspaper ad	4.4
Regional Guides	4.1
SKI–NH Magazine	4.0
Magazine ad	3.0
Ski Show	1.5
Billboard ad	1.2

The skiers were asked how they used the above sources of information to make trip decisions. Table 18 summarizes how this information was used. Almost one-third noted that they did not make any use of the information sources listed, although it is very likely that this group did make use of their knowledge from previous trips. Selecting the ski area(s) was the major use made of this information.

TABLE 18.—INFORMATION WERE SOURCES USED TO SELECT

Activity	Winter (percent)	Spring (percent)	Season (percent)
Ski Areas	47.3	39.5	45.1
Lodging	14.7	19.1	15.9
Dining	16.7	18.5	17.2
Itinerary	9.2	10.0	9.4
Shopping Areas	13.6	8.7	12.2
Did not use information	25.9	37.1	29.0

The skiers were asked to provide three key words that best described New Hampshire. In Table 19 the top ten words mentioned are ranked with the most weight if the word was listed first, less weight if second and no weight if listed third. There was some variation among the winter and spring months in the ranking of these words, but only 13 different words appeared on the top ten lists for the winter and spring months. The three words which made either the winter or spring top ten list, but did not make the top ten list for the season (shown in Table 19) are: ‘‘rural,’’ ‘‘natural’’ and ‘‘safe.’’ ‘‘Beautiful’’ was listed three times as often as the second place word: ‘‘scenic.’’ These two words plus ‘‘friendly’’ and ‘‘clean’’ are very often used to describe other seasons of the year. ‘‘Relaxing’’ and ‘‘peaceful’’ are very common words which appear in other spring season surveys. ‘‘Great,’’ ‘‘fun,’’ ‘‘mountains’’ and ‘‘cold’’ are words which must be associated with skiing as they have not been found to be highly ranked in other surveys of New Hampshire visitors.

TABLE 19.—KEY WORDS

Word	Winter rank	Spring rank	Season rank
Beautiful	1	1	1
Scenic	2	2	2
Friendly	3	5	3
Relaxing	4	2	4
Great	5	7	5
Fun	7	4	6
Clean	6	8	7
Mountains	8	9	8
Cold	9	9	9
Peaceful	10	6	10

Conclusion

The returned survey forms skiers during the 1994–5 season indicate that the core group of skiers were those who stay at their own (or a friend’s) second home, condominium or time share unit. There was little change in the numbers of this group who skied in comparison with the 1992–3 season. Those skiers who pay to stay overnight at a resort, motel, inn or bed and breakfast were less likely to visit a ski area during the 1994–5 season. The day trip skier also appeared to be smaller in number than in recent seasons.

The survey results show that skiers do use information in deciding whether or not to go skiing, what ski areas to visit, where to stay and dine and where to shop during their ski trip. The winter and spring skiers have slightly different demographic and trip characteristics. The winter skier is more likely to be a beginner and to be from New England. The Canadian skier is more likely to visit during the springs, as has been found in other surveys. Skiers who come to New Hampshire make very little use of ski shows, bill board advertising and travel agents in making ski trip decisions. Snow phones, ski area brochures, special ticket promotions, weather reports and television advertising are important advertising and information sources for skiers.

Davidson-Peterson Associates, Inc.

Research Memorandum

Profile of Visitors to Maine’s Ski Resorts, Winter Ski Season 1994–95

Presented to: Ski Maine

Presented by: Davidson-Peterson Associates, Inc., P.O. Box 350/18 Brickyard Court, York, Maine 03909–0350

A. Introduction

Davidson-Peterson Associates, Inc. was commissioned by Ski Maine to conduct a visitor profile and expenditure study for the State’s ski destinations during the 1994–95 ski season.

In order to complete this task, Ski Maine acquired the cooperation of the Ski Industries Department at the University of Maine at Farmington. Between December 17, 1994 and February 26, 1995, a team of students visited all 13 Ski Maine members and collected and coded a total of 896 completed questionnaires. These questionnaires were then processed by Davidson-Peterson Associates, Inc. staff.

Using confidential industry information, the data were weighted to represent the total universe of visitors to Maine’s ski areas during the past ski season.

Now let’s take a look at who skis in the state of Maine.

B. Who Visits Maine’s Ski Areas?

1. Region of Residence

Maine’s skiers live nearby. Most of Maine’s skiers are residents of the United States (96%). Nearly eight in 10 reside within New England (78%), and fully two in five are Mainers (40%). One quarter are residents of Massachusetts (25%), and one in 20 resides in New Hampshire (5%). Fewer are residents of

Connecticut (4%) or Rhode Island (3%). Less than one half of one percent are from Vermont.

One Maine skier in 20 is a resident of the Middle Atlantic states (6%).

One in eight reports that he/she is a resident of the United States but chose not to specify.

Of the few international skiers, half are Canadian residents (2%).

2. How Old Are They?

Visitors to Maine's ski areas are all ages. Not surprisingly, Maine's skiers tend to be middle-aged or younger, with an average of 37.1. More than half are between the ages of 35 and 54 (54%). Nearly one quarter are 25–34 (23%). One in six is a young adult 18–24 (16%). Very few of Maine's skiers are 55 or older (5%). Of course, respondents had to be at least 18 years old to complete the survey.

3. Gender

More than half of the visitors to Maine's ski areas are male (54%). While fewer than two in five are female (39%), one in 12 chose not to respond (7%).

4. How Much Do They Make?

Maine's skiers tend to be affluent. More than two in five report their annual pretax household income to be more than $60,000 (41%). Fewer report earning less than $30,000 (15%), while one in ten chose not to answer (9%).

The average reported annual pretax household income is $57,600.

Now let's examine the detailed findings of this study.

C. Detailed Findings

1. Reason For This Ski Trip

Visitors to Maine's ski areas are there for one main reason—to ski. Fully seven responders in 10 report that the one main reason for their trip was to visit that particular ski resort (70%). One in 10 reports taking the trip for rest and relaxation—a change of pace (11%).

Slightly more than one in ten reports the main reason for the trip being either to visit several ski areas or to visit friends and relatives (6% each). One in 20 is either seeing an area not yet seen or attending a special event (3% and 2%, respectively).

2. Number of Nights Spent In Maine

Visitors to Maine's ski areas spend an average of 4.1 nights away from home in Maine during a ski trip. One in five spends 1–2 nights away from home in Maine (19%). Slightly fewer spend 3–4 nights away from home in Maine (15%). However, fully one in five spend at least five nights away from home in Maine (20%).

Two Maine skiers in five spend no nights away from home during their ski trip (41%).

Residents of Maine staying overnight away from home stay an average of 3.6 nights, while non-residents stay an average of 4.2 nights.

3. Type of Overnight Accommodations

Maine's skiers are equally likely to stay in paid accommodations or accommodations with no fee. One half of those visitors who stayed overnight in Maine stayed in paid accommodations (49%). Nearly one quarter stayed in a rented home/condominium/cabin (23%). One in five stayed in a hotel/motel/resort (19%). Many fewer stayed in either a historic inn (4%) or a bed and breakfast (3%).

Therefore, one half of those visitors staying overnight in Maine also stayed in accommodations with no fee (51%). One quarter stayed in an owned or borrowed home/condominium/cabin (23%). One in seven stayed at the home of friends or family (14%). One in seven also chose not to specify (15%).

4. Travel Party Size

Visitors to Maine's ski areas do not travel alone. The average travel party size of visitors to Maine's ski resorts is 3.5 persons.

The average party size for non-residents is 3.8, compared to an average of 3.0 for residents.

5. Presence of Children in Party

Perhaps surprisingly, there do not tend to be children in Maine's ski travel parties. Fully three visitors to Maine's ski areas in five report that there are no children younger than 13 in their travel party (60%).

Of those who are traveling with children younger than 13, the average number of children per travel party is 1.9.

6. Type of Skiing Participated In By Party

Maine's skiers do just that—downhill ski. Nearly all of the respondents reported that someone in their travel party was going to participate in downhill skiing (95%). One in seven reported that someone would cross-country ski or snowboard (15% and 14%, respectively). Very few reported that someone would telemark ski (3%).

Not surprisingly, due to its increasing popularity with young adults, those visitors 18–24 are less likely to participate in downhill skiing (89% vs. 97%) and far more likely to participate in snowboarding (27% vs. 11%).

7. Reason For Skiing In Maine

Not surprisingly due to the region of residence of Maine's skiers, they are skiing in Maine because of its location and reputation. Nearly two visitors in five to Maine's ski resorts say they are skiing in Maine because they live either in Maine or nearby (38%). Slightly fewer are skiing in Maine because of the reputation of the area and the facilities (34%). One in eight is visiting family or friends (12%). One in 20 is taking advantage of a special package (6%).

Interestingly, one half of the non-residents are visiting Maine due to the reputation of the facilities (52%), and nearly one in five is visiting family and friends (17%).

8. Type of Transportation Used

Another unsurprising characteristic due to Maine's skiers' region of residence, they drive their own vehicles to the ski areas. More than nine Maine skiers in 10 used their own vehicles to get to the ski area (92%). One in 20 either rented a vehicle or took a bus (3% each). Fewer still flew (2%—1% to Boston and 1% to Portland).

1% reported taking a train—more than likely the Silver Bullet Express to Sunday River.

9. Experience on Maine's Roadways

Overall, visitors to Maine's ski areas rate the State's roadways above average. On the Maine Turnpike, more than three visitors in five rated the road conditions either very good or good (65%), and another one in 10 rated them average (11%). Traffic was reported to be very good or good by fully three in five visitors (60%). Slightly fewer ranked signage and traffic at toll booths the same (58% and 57%, respectively).

Aside from the Turnpike, traffic on the other roadways within the State was rated very good or good by more than three visitors in five (63%). Fully three in five also rated the road conditions and signage the same (60% each).

Maine residents tended to give the State's roadways a lower grade than non-residents.

10. Most Important Factor in Timing of Trip Home

When deciding what time to head home, the majority of Maine's skiers cite the distance they have to travel as the most important factor. More than three visitors to Maine's ski areas in five reported that the single most important factor used in determining the time they head home is the distance that they have to travel (64%). Another one in six report the reason to be fatigue (16%). One in 10 say he/she decides when to leave depending upon the weather

(11%). One in 20 either make this decision depending on traffic or did not respond (5% each).

11. How Downhill Ski Trips Are Planned

Maine's skiers like to ski whenever they have the opportunity to do so. One half of the Maine skiers plan their ski trips whenever time and finances allow them to do so (50%). One third say they try to plan a ski vacation with at least one overnight each ski season (36%). Three in 10 report taking day ski trips several times each ski season (28%). One in 10 says that they do not plan their downhill ski trips (9%).

Non-residents are more than twice as likely as residents are to plan a ski vacation with at least one overnight each ski season (46% vs. 21%).

12. Pattern of Overnight Ski Vacations

Not surprising due to the response found in the previous section, visitors' trips to Maine's ski areas tend not to follow a pattern. More than one third of the visitors to Maine's ski areas report that their overnight ski vacations do not follow a pattern (35%). One visitor in five says he/she plans overnight trips for President's Week—February 18 through February 26 during 1995—each year (22%). One in six says he/she takes a ski vacation between January 2 and February 17 (16%). Slightly fewer take a ski vacation between February 27 and the end of the ski season (12%) or during Christmas Week—December 25 through January 1 (11%). Very few Maine skiers take a ski vacation prior to Christmas each year (7%).

One in five visitors chose not to respond to this question (19%).

13. Activities Participated in During Ski Trip

Besides skiing, visitors to Maine's ski areas are there to relax. Nearly three visitors in five say they are going to participate in relaxing ''quiet time'' during their trip (58%). Two in five say they are going to enjoy fine dining (38%). One quarter report seeking nightclub entertainment (26%) or fitness activities (23%). One in six reports sightseeing (16%). Very few say they will go snowmobiling (7%), snowshoeing (3%), skating or cross-country skiing (2% each), or shopping (1%).

Non-residents are far more likely to participate in relaxing ''quiet time'' (64% vs. 47%), as well as sightseeing (18% vs. 12%).

14. Bring Lunch or Purchase Lunch

The cost of food at Maine's ski areas causes visitors to bring their own lunches with them to the mountain. Slightly more than half of Maine skiers bring their lunches with them (52%). One third bring their lunches from home (34%). Many fewer bring their lunches from non-paid overnight accommodations or a retail establishment (6% each), or from paid overnight accommodations (4%).

Of course, residents are more likely to bring their lunches with them (58% vs. 48%).

Of those who brought their lunches with them, nearly two-thirds report doing so because the price of food at the ski areas is too high (64%). Other reasons given were the quality of food available at the ski areas (17%), the selection/variety available (14%), and the fact that they did not want to wait in line (11%). Only slightly more than two in five purchase lunch at the ski area (44%).

15. Where Do Maine's Skiers Ski?

Visitors to Maine's ski areas also visit ski destinations in other states. Nearly three quarters of those who skied in Maine during this past ski season also skied in Maine during the previous ski season—1993–1994 (72%). More than two in five skied at Sunday River (43%), while slightly fewer skied at Sugarloaf (37%).

Three visitors in 10 visited a New Hampshire ski area during 1993–'94 (29%). One in five skied in Vermont (21%).

Of course during this past ski season—1994–1995—all of those visitors responding skied in Maine (100%). Two-thirds skied at Sunday River at least once during the past ski season (64%), while one half skied at Sugarload (49%). One in five visited Shawnee Peak (20%).

Three Maine skiers in 10 also skied at least once at a New Hampshire area this past season (28%). Slightly fewer visited a Vermont ski area (22%).

16. Average Number of Days Skied

Visitors to Maine's ski areas ski often. Maine's skiers skied an average of 16.6 times in Maine during the past ski season—up slightly from an average of 16.3 in 1993–'94.

They skied an average of 6.7 times in New Hampshire (vs. 6.0 the previous season), and 4.9 times in Vermont (down slightly from 5.2 the previous season). They also skied 8.4 times at other destinations (down from 9.3 the previous season).

D. How Much Do They Spend?

1. Hotel/Motel/Resort/Bed & Breakfast/ Historic Inn

Visitors to Maine's ski areas who stay overnight in a hotel, motel, resort, bed & breakfast or historic inn have the highest daily expenditures. These visitors spend an average of $111.82 per person per day.

One third is spent on lodging (35%, or $39.13). Slightly less is spent on sports fees such as lift tickets and equipment rental (27%, or $30.75). One fifth of the daily expenditure is for food (19%, or $20.84). Less than one tenth is spent on shopping (7%, or $7.89). Other expenditures total $13.21.

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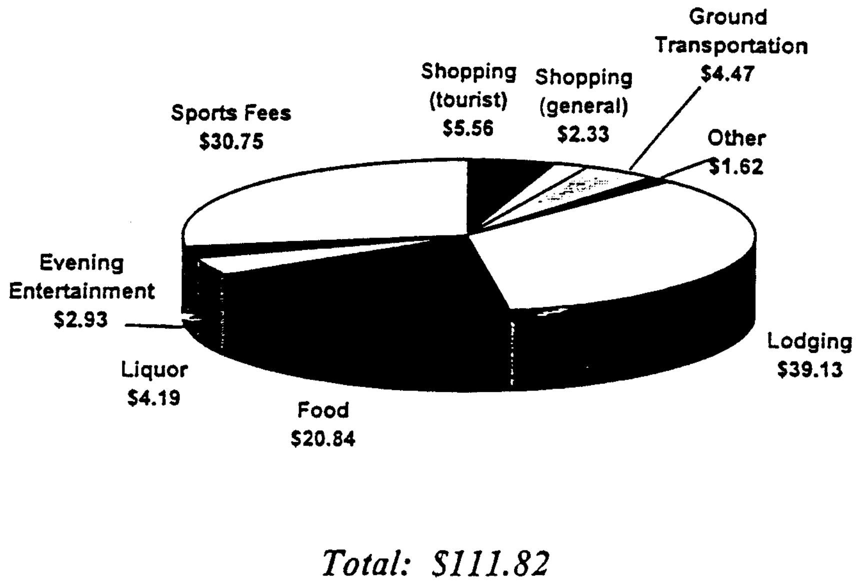

2. Rented Condominium/Cabin

Slightly less is spent by Maine skiers who rent a condominium or cabin during their stay in the state. These visitors spend $110.57 per person per day.

More than two-fifths of this expenditure is for lodging (42%, or $46.70). Nearly one third is spent on sports fees (30%, or $33.37). One eighth is spent on food (14%, or $15.19). Very little is spent on shopping (6%, or $6.93). Other expenditures total $8.38.

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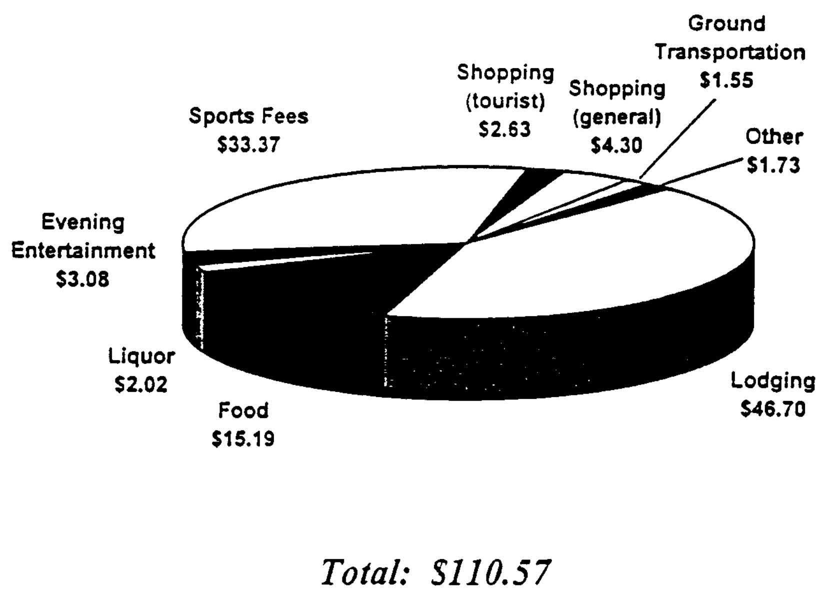

3. Daytrippers

Not surprisingly, visitors to Maine's ski areas who do not spend any nights away from home spend far less than those who do. These visitors spend an average of $56.44 per person per day.

Two thirds of their expenditures are for sports fees (67%, or $38.08). They spend one sixth on food (15%, or $8.64). They also spend very little on shopping (6%, or $3.22). Other expenditures total $6.52.

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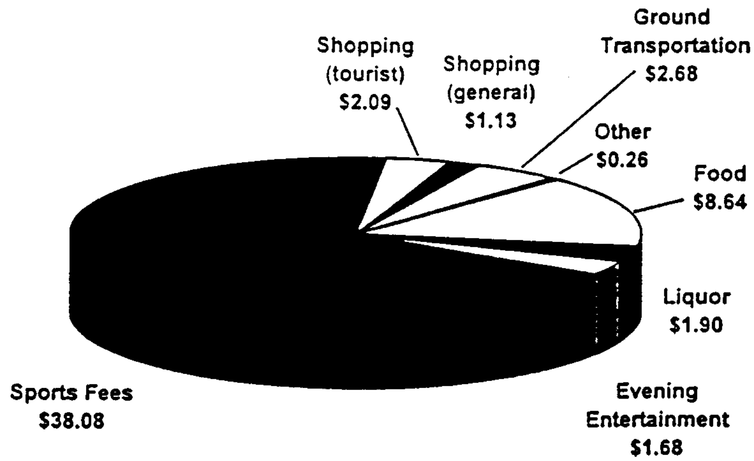

Total: $56.46

4. Visiting Friends and Relatives

Those visitors who are staying at the home of friends or relatives spend nearly the equivalent of daytrippers. These visitors spend an average of $56.15 per person per day.

More than two fifths of their expenditures are for sports fees such as lift tickets and rental equipment (43%, or $24.05). One quarter is for food (24%, or $13.34). They spend more on shopping than others do (15%, or $8.60). Other expenditures total $10.15.

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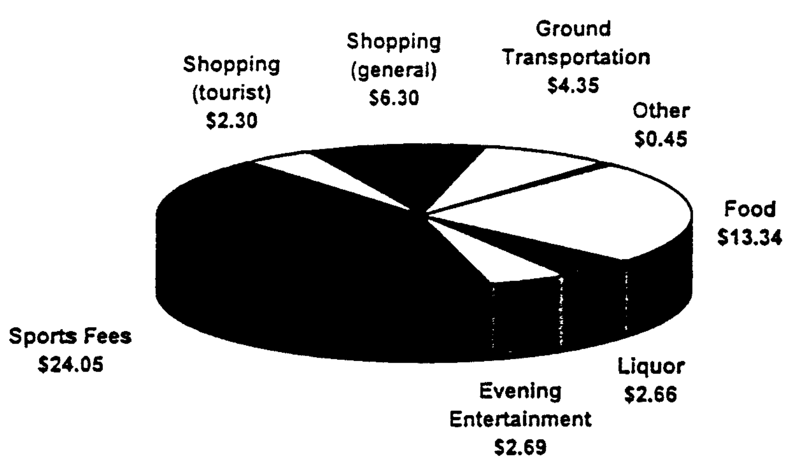

Total: $56.14

5. Condominium/Cabin Owned or Borrowed

Visitors to Maine's ski areas who stay overnight in a condominium or cabin that they either own or borrowed have spent the least during their trip. Those visitors on average spend $46.63 per person per day.

Two thirds of this expenditure is for sports fees (41%, or $18.99). Much like those visitors staying with friends or relatives, those staying in an owned or borrowed condo/cabin spend one quarter of their expenditures on food (26%, or $12.04). One eighth is spent on shopping (13%, or $6.11). Other expenditures total $9.49.

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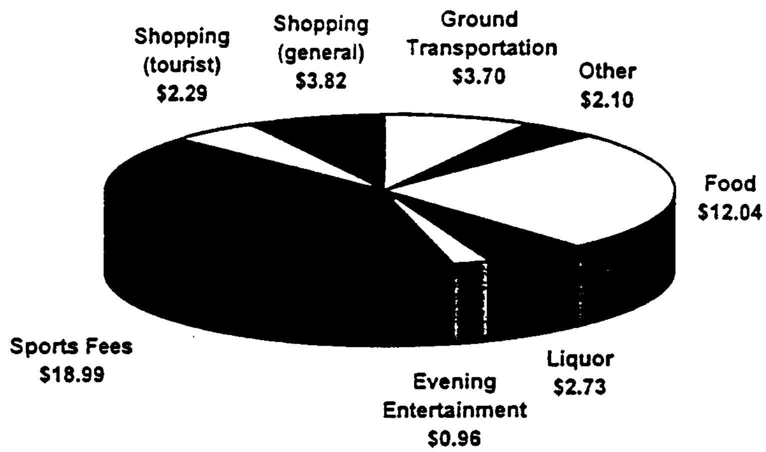

Total: $46.63

1. Reason For This Ski Trip

	Total	Resident	Non-resident
Base	(888) percent	(357) percent	(523) percent
Visiting this ski resort	70	72	68
Rest and relaxation—a change of pace	11	16	7
Visiting several ski resorts	6	2	9
Visiting friends and relatives	6	3	9
Seeing an area I have not seen	3	1	4
Attending a special event	2	1	2
Other	2	4	1

2. Total Number of Nights Spent in Maine

	Total	Resident	Non-resident
Base	(888) percent	(357) percent	(523) percent
None	9	2	13
One	5	6	4
Two	14	6	20
Three	9	2	14
Four	6	2	8
Five or more	20	7	28
Resident	32	73	....
Second home	2	....	7
No answer	4	2	5
Mean	4.1	3.6	4.2

Note: Columns of figures may not add to totals shown due to rounding.

3. Type of Overnight Accommodations

	Total	Resident	Non-resident
Base: those who stayed overnight	(632) percent	(216) percent	(409) percent
Paid Accommodations	*49*	*23*	*62*
Hotel/motel/resort	19	9	24
Bed and breakfast	3	1	4
Historic inn	4	1	5
Rented home/condominium/cabin	23	11	29
Accommodations/No Fee	*51*	*77*	*38*
Owned or borrowed home/condominium/cabin	23	30	19
Home of family or friends	14	12	15
No answer	15	36	4

Note: Columns of figures may not add to totals shown due to rounding.

4. Travel Party Size

	Total	Resident	Non-Resident
Base	(888) percent	(357) percent	(523) percent
One	10	12	8
Two	29	35	25
Three	18	21	16
Four–five	28	23	32
Six–eight	12	8	15
Nine or more	3	(*)	4
Mean	3.5	3.0	3.8

Note: Columns of figures may not add to totals shown due to rounding.
*Less than 0.5%.

5. Presence of Children in the Party

	Total	Resident	Non-resident
Base: those who answered	(798) percent	(313) percent	(479) percent
None	60	59	60
One	16	18	16
Two	16	14	17
Three	5	6	3
Four or more	3	2	3
Mean (excluding none)	1.9	1.9	1.9

6. Type of Skiing Participated In by Party

	Total	Resident	Non-resident
Base	(888) percent	(357) percent	(523) percent
Downhill ski	95	94	96
Cross-country ski	15	20	11
Snowboard	14	14	14
Telemark ski	3	5	1

Note: Multiple responses allowed.

7. Reason For Skiing in Maine

	Total	Resident	Non-resident
Base	(888)	(357)	523)
Nearby/live in Maine (percent)	38	81	8
Reputation of area/facilities (percent)	34	8	52
Visit family/friends (percent)	12	4	17

7. REASON FOR SKIING IN MAINE—Continued

	Total	Resident	Non-resident
Special package offered (percent)	6	5	8
Recommendation (percent)	3	1	5
Location of vacation home/condo (percent)	3	1	4
No answer (percent)	3	(*)	5

Note: Columns of figures may not add to totals shown due to rounding.
* Less than 0.5%.

8. TYPE OF TRANSPORTATION USED

	Total	Resident	Non-resident
Base	(888) percent	(357) percent	(523) percent
Own vehicle	92	94	90
Rented vehicle	3	1	4
Bus	3	3	3
Fly	2	1	3
Into Portland	1	(*)	2
Into Boston	1	(*)	1
Train	1	2	1

Note: Columns of figures may not add to totals shown due to rounding.
* Less than 0.5%.

9. EXPERIENCE ON MAINE ROADWAYS

	Total	Resident	Non-resident
Base	(888) percent	(357) percent	(523) percent
Maine Turnpike			
Road Conditions:			
Good*	65	54	72
Average	11	13	10
Traffic:			
Good*	60	48	69
Average	13	16	10
Signage:			
Good*	58	49	64
Average	15	17	13
Traffic at Toll Booths:			
Good*	57	47	64
Average	12	12	12
Maine's Other Roadways			
Road Conditions:			
Good*	60	53	64
Average	26	26	26
Traffic:			
Good*	63	54	69
Average	25	30	21
Signage:			
Good*	60	55	63
Average	26	32	23

* Those responding to ''very good'' or ''good'' on a five-choice scale.

10. MOST IMPORTANT FACTOR IN TIMING OF TRIP HOME

	Total	Resident	Non-Resident
Base:	(888) percent	(357) percent	(523) percent
Distance to travel	64	51	73
Fatigue	16	25	9
Weather	11	13	10
Traffic	5	4	5

10. MOST IMPORTANT FACTOR IN TIMING OF TRIP HOME—Continued

	Total	Resident	Non-Resident
Other	(*)	....	(*)
No answer	5	7	3

Note: Columns of figures may not add to totals shown due to rounding.
* Less than 0.5%.

11.—HOW DOWNHILL SKI TRIPS ARE PLANNED

	Total	Resident	Non-resident
Base	(888) percent	(357) percent	(523) percent
Whenever time and finances allow	50	55	46
I try to plan a ski vacation each ski season	36	21	46
I plan day trips several times each ski season	28	32	25
I do not plan my downhill ski trips	9	11	8
No answer	4	6	2

Note: Multiple responses possible.

12. PATTERN OF OVERNIGHT SKI TRIPS

	Total	Resident	Non-Resident
Base	(888) percent	(357) percent	(523) percent
Start of season–December 24	7	8	6
December 25–January 1	11	8	13
January 2–February 17	16	10	20
February 18–February 26	22	12	29
February 27–end of season	12	11	12
Every weekend	(*)	....	1
My overnight ski trips do not follow a pattern	35	39	33
No answer	19	28	13

Note: Multiple responses possible.
*Less than 0.5%.

13.—ACTIVITIES PARTICIPATED IN DURING TRIP

	Total	Resident	Non-Resident
Base	(888) percent	(357) percent	(523) percent
Relaxing/"quiet time"	58	47	64
Fine dining	38	34	41
Nightclub entertainment	26	30	23
Fitness activities	23	26	22
Sightseeing	16	12	18
Snowmobiling	7	10	5
Snowshoeing	3	4	2
Skating	2	1	3
Cross-country skiing	2	2	1
Shopping	1	1	1
Other	1	1	1
No answer	16	24	10

Note: Multiple responses possible.

14.—TYPE OF LUNCH

	Total	Resident	Non-Resident
Base	(888) percent	(357) percent	(523) percent
Purchase lunch at ski area	44	37	48
Brought a lunch—	52	58	48
From home	34	43	28

14.—TYPE OF LUNCH—Continued

	Total	Resident	Non-Resident
From paid overnight accommodations	4	1	6
From non-paid overnight accommodations	6	3	8
From retail establishment	6	9	5
Unspecified	1	2	1
No answer	5	5	4

Note: Columns of figures may not add to totals shown due to rounding.

15. REASON FOR BRINGING LUNCH

	Total	Resident	Non-Resident
Base: those who brought lunch	(461) percent	(237) percent	(225) percent
Price	64	60	68
Quality of food	17	16	18
Selection/variety	14	14	12
Didn't want to wait in line	11	12	10
No answer	28	31	26

Note: Multiple responses possible.

16. WHERE MAINE'S SKIERS DID SKI DURING 1993–94

	Total	Resident	Non-Resident
Base	(888) percent	(357) percent	(523) percent
Maine	72	88	61
Sunday River	43	48	40
Sugarloaf	37	55	25
Shawnee Peak	15	24	9
Mt. Abrams	15	27	6
Saddleback	11	20	4
Lost Valley	8	14	3
Other Maine areas	15	29	5
New Hampshire	29	18	36
Vermont	21	12	27
Other New England	6	1	10
Other U.S. destinations	10	4	14
.			
Canada destinations	1	(*)	2
Other international destinations	1	1	1

Note: Multiple responses possible. Columns of figures may not add to totals shown due to rounding.
*Less than 0.5%

17. WHERE MAINE'S SKIERS DID SKI DURING 1994–1995

	Total	Resident	Non-Resident
Base	(888) percent	(357) percent	(523) percent
Maine	100	100	100
Sunday River	64	55	71
Sugarloaf	49	63	40
Shawnee Peak	20	27	15
Mt. Abrams	14	25	6
Saddleback	13	24	5
Lost Valley	8	16	3
Camden Snowbowl	6	10	2
Other Maine areas	14	26	5
New Hampshire	28	16	36
Vermont	22	15	27
Other New England	7	1	12
Other U.S. destinations	10	5	13
Canada destinations	3	2	4

17. WHERE MAINE'S SKIERS DID SKI DURING 1994–1995—Continued

	Total	Resident	Non-Resident
Other international destinations	1	1	(*)

Note: Multiple responses possible.
Columns of figures may not add to totals shown due to rounding.
*Less than 0.5%

18. AVERAGE NUMBER OF DAYS SKIED DURING 1993–1994

	Total	Resident	Non-Resident
Base:*	....	....	....
Maine	16.3	21.5	11.2
Sunday River	9.8	11.6	8.5
Sugarloaf	9.1	10.7	6.9
Shawnee Peak	6.1	5.4	7.4
Saddleback	5.5	6.2	3.4
New Hampshire	6.0	4.9	6.4
Vermont	5.2	4.7	4.9
Other	9.3	15.8	8.2

*Bases vary.

19. AVERAGE NUMBER OF DAYS SKIED DURING 1994–1995

	Total	Resident	Non-Resident
Base:*	#	#	#
Maine	16.6	25.5	10.6
Sugarloaf	12.1	15.3	8.7
Sunday River	9.0	13.8	6.5
Shawnee Park	6.6	6.0	7.4
Saddleback	5.9	6.4	4.6
New Hampshire	6.7	3.4	7.6
Vermont	4.9	4.5	5.1
Other	8.4	6.7	8.8

*Bases vary.

20.—REGION OF RESIDENCE

	Total
Base	(888) percent
United States	96
New England	78
Maine	40
Massachusetts	25
New Hampshire	5
Connecticut	4
Rhode Island	3
Vermont	*
Middle Atlantic	6
Other U.S./unspecified	13
Canada	2
Other international	1
No answer	1

21.—DEMOGRAPHIC PROFILE

	Total percent
Base	(888)
Age:	
18–24	16
25–34	23
35–44	36
45–54	18

21.—DEMOGRAPHIC PROFILE—Continued

	Total percent
55–64	3
65 and older	2
No answer	2
Mean	37.1
Gender:	
Male	54
Female	39
No answer	7
Annual Household Income:	
Less than $30,000	15
$30,000–$44,999	17
$45,000–$60,000	17
More than $60,000	41
No answer	9
Mean	$57,600

Appendixes A–E of the Mt. Washington Valley Task Force Report could not be reprinted in the Federal Register, however, they may be inspected in Suite 25, U.S. Department of Justice, Legal Procedures Unit, 325 7th St., N.W., Washington, D.C. at (202) 514–2481 and at the Office of the Clerk of the United States Court for the District of Columbia.

[FR Doc. 96–26995 Filed 10–29–96; 8:45 am]

BILLING CODE 4410–01–C

Immigration and Naturalization Service

[INS No. 1734–95]

Extension of Direct Mail Program to Applications for Adjustment of Status by Beneficiaries of Employment-Based Petitions; Filing of Employment-Based Petitions With the Texas Service Center

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service (INS) is expanding and adjusting its Direct Mail Program, under which applicants and petitioners for certain immigration benefits mail their applications directly to an INS service center for processing. This expansion of the Program is intended to improve INS service to the public by reducing the time required to process applications and petitions. In certain instances this notice affects the following applications or visa petitions: (1) Form I–129, Petition for a Nonimmigrant Worker; (2) Form I–131, Application for Travel Document; (3) Form I–140, Immigrant Petition for Alien Worker; (4) Form I–485, Application to Register Permanent Residence or Adjust Status; (5) Form I–526, Immigrant Petition by Alien Entrepreneur; (6) Form I–765, Application for an Employment Authorization Document; and (7) Form I–829, Petition by Entrepreneur to Remove Conditions.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Gerard Casale, Senior Adjudications Officer, Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW., Room 3214, Washington, DC 20536. Telephone: (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Under the INS Direct Mail Program, certain applicants and petitioners mail their applications or petitions for immigration benefits directly to an INS service center for processing instead of submitting them to a local INS office. Direct Mail improves the efficiency of service and the quality of case processing, by reducing the processing times for applications and petitions. The ultimate goal of the Direct Mail Program is to convert the filing location of applications and petitions for immigration benefits from local INS offices to the service centers in circumstances where it is practicable to do so. The purposes and strategy of the Direct Mail Program have been discussed in detail in previous rulemaking and notices, most recently on July 1, 1994, when the INS published an interim rule introducing Phase 3 of the Program (see 59 FR 33903–06) and a notice announcing the extension of Direct Mail to the Baltimore District Office as a pilot program (see 59 FR 33985–86).

The need to expand the Direct Mail Program is particularly urgent at this time. Applications and petitions for immigration benefits, particularly those for adjustment of status under section 245 of the Immigration and Nationality Act (Act) and for naturalization, are being filed in record numbers. As a result, processing time for these applications has lengthened significantly. Expanding Direct Mail is a key element in the INS strategy to reduce that processing time.

Expansion of Direct Mail

The INS is expanding the Direct Mail Program to include all Form I–485 applications for adjustment of status under section 245 of the Act which are filed on the basis of an approved employment-based immigrant petition, including those for eligible dependents of the principal applicant. Since the supporting visa petitions are already being adjudicated at the service centers, this expansion of Direct Mail will improve consistency in the adjudication of related applications for adjustment of status.

As of November 29, 1996, the following applications and petitions must be mailed to the appropriate INS service center (see section entitled ‘‘Modification of filing instructions on relating forms’’) instead of being filed with a local INS district office:

(1) Form I–485, Application to Register Permanent Residence or Adjust Status, (including adjustment applications by eligible dependents of the principal applicant), if it is being filed on the basis of any of the following approved employment based visa petitions:

—Form I–140, Immigrant Petition for Alien Worker;
—Form I–526, Immigrant Petition by Alien Entrepreneur; and
—Any Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant, which classifies the

beneficiary as a ''Special Immigrant Religious Worker''.

Beneficiaries of an approved Form I–140 visa petition must bear in mind that their eligibility to apply for permanent residence on that basis depends on whether the visa priority date of the petition indicates immediate availability of an immigrant visa to the applicant on the date the Form I–485 is filed. Service centers therefore must reject any Form I–485 submitted on behalf of an applicant to whom an immigrant visa is not yet available on the date the service center received the application. See 8 CFR 245.1(g)(1) and 245.2(a)(2).

Under the Direct Mail Program, applicants for employment based permanent resident status submit photographs as well as a complete set of fingerprints bearing their signature to the service center for the purpose of processing their required security agency checks. Aliens whose Form I–485 adjustment of status applications have been approved by the service center director must also go to a local INS office in order to execute a Form I–89 Data Collection Card for the capture of the biometric data (photograph, index fingerprint and signature) required for the production of their Alien Registration Receipt Card. A final rule published on June 4, 1996 (at 61 FR 28003), which took effect July 5, 1996, enables applicants to select a non-INS Designated Fingerprinting Service to prepare the set of fingerprints needed to satisfy the preliminary security clearance requirements, thereby eliminating the need to appear at an INS office for that particular purpose. The INS plans to restructure Form I–485 processing to eliminate the need for a separate Form I–89 card to capture the applicant's biometric alien registration card data. However, at the present time, applicants whose Form–485 applications have been approved must continue to appear at a local INS office for the execution of the I–89 data card. The INS will issue instructions to aliens involved in Form I–485 processing under this Direct Mail Program, regarding when and how the Form I–89 card should be executed.

The service center may transfer an I–485 application to a local INS office if the INS has determined, based on the specific facts of the particular case, that an interview is necessary. In such a case, the service center will send the applicant written notice of the transfer, with instructions that any subsequent application for related benefits based on the adjustment application, such as a Form I–765 application for employment authorization or I–131 application for advance parole, must be filed with the local office where the I–485 application is pending.

An applicant for adjustment of status may apply concurrently for an employment authorization document (EAD) by filing Form I–765, or for advance parole authorization by filing Form I–131. Once the service center has generated a Form I–797C Notice of Action acknowledging the filing of the Form I–485 adjustment application, the Form I–797C will constitute evidence of eligibility for purposes of applying for an EAD or for advance parole authorization. This notice therefore, also affects the filing of the following applications:

(2) Form I–131, Application for a Travel Document, when filed for the purpose of obtaining advance parole authorization on the basis of one of the employment-based Form I–485 applications outlined above. An applicant may elect to apply for advance parole at the INS district office having jurisdiction over the place of qualifying employment, by including a copy of the Form I–797C receipt notice for the Form I–485 with the Form I–131 application. In the case of a Form I–485 application which has been transferred from the service center to an INS local office, the applicant must file any subsequent Form I–131 advance parole application with that local office.

(3) Form I–765, Application for an Employment Authorization Document (EAD), which is being filed either together with one of the employment-based Form I–485 applications described above or, at a later date, at the service center where such Form I–485 application is pending. Any Form I–765 submitted separately from a Form I–485 adjustment application must be accompanied with a copy of the Form I–797C receipt showing that the Form I–485 adjustment of status application has been filed.

The INS is in the process of introducing new technology for the production of all EADs at service centers. In the meantime, if the service center has transferred the Form I–485 application of an employment based immigrant to an INS local office, the applicant must file any subsequent Form I–765 with that local office, provided that it has the capability to produce a valid EAD. Any other applicant whose Form I–485 application is pending at a service center may also elect to apply for an EAD at an INS local office, provided that it has jurisdiction over the applicant's place of intended employment and has the capability to produce a valid EAD.

Jurisdiction of the Texas Service Center Over Form I–140, I–129, I–526 and I–829 Petitions in Behalf of Beneficiaries Within Its Geographical Area

A previous notice, published May 5, 1995, at 60 FR 22408–09, initiated a 6-month trial period in which petitioners filing employment-based petitions in behalf of beneficiaries who will be employed in a state within the jurisdiction of the Texas Service Center had the option of filing the petitions at the Texas Service Center. Based on field experience and customer feedback, the Texas Service Center has been successful in adjudicating employment-based petitions during the trial period. The INS has also determined that the extension of Direct Mail to employment-based adjustment applications is most efficient when employment-based petitions are filed at the service center having jurisdiction over the place where the applicant will be employed. Therefore, effective November 29, 1996, the INS will amend the filing instructions to the following forms to require that they be filed at the Texas Service Center under the conditions described below:

(1) Form I–140, Immigrant Petition for Alien Worker, when filed in behalf of an alien beneficiary who will be employed within the geographic jurisdiction of the Texas Service Center;

(2) Form I–129, Petition for a Nonimmigrant Worker, when filed in behalf of an alien beneficiary who will be employed within the geographic jurisdiction of the Texas Service Center;

(3) Form I–526, Immigrant Petition by Alien Entrepreneur, when filed by an entrepreneur whose commercial enterprise is located within the geographic jurisdiction of the Texas Service Center; and

(4) Form I–829, Petition by Entrepreneur to Remove Conditions, when filed by an entrepreneur whose commercial enterprise is located within the geographic jurisdiction of the Texas Service Center.

Transition period

The changes in filing location and expansion of the Direct Mail Program detailed in this notice are effective as of November 29, 1996. However, during the first 60 days following the effective date, local INS offices that receive any of the applications stipulated in this notice may choose to continue to accept and process them. This decision will be at the local office's discretion, taking into account pertinent factors such as whether the transition to Direct Mail will significantly delay EAD issuance and whether accepting the case is appropriate in light of current workloads or other relevant circumstances. Applicants who believe there is a basis for a local office to exercise this option should contact that office prior to filing.

Until January 28, 1997, any local INS office that receives applications designated by this notice which it does not choose to retain for adjudication shall forward them, at no cost to the applicant or petitioner, to the appropriate service center for processing. On arrival at the service center they will be receipted, at which time they will be considered to be filed. Any application or petition designated for Direct Mail which is submitted to a local office after the expiration of this transition period will be returned to the applicant for submission to the appropriate service center.

Modification of Filing Instructions on Relating Forms

Effective November 29, 1996, the Direct Mail filing instructions contained in this notice will replace any filing instructions presently contained on Forms I–129, I-131, I–140, I–485, I–526, I–765, and I–829 which are inconsistent with this notice. The INS will issue and attach the following supplementary filing instructions to all of the aforementioned forms which it distributes to the public.

(1) Form I–129, Petition for a Nonimmigrant Worker

An attachment will be affixed to that part of Form I–129 entitled, Instructions for Completing Petition for a Nonimmigrant Worker, Form I–129 (Rev. 12/11/91)N, to read as follows:

ATTENTION APPLICANT:

Where to File.

If you are petitioning in behalf of a citizen of Mexico for TN (Treaty NAFTA) professional status under the North American Free Trade Agreement (NAFTA), you must file this petition in accordance with 8 CFR 214.6(d), with the Nebraska Service Center at the address given in the regular Instructions section of the attached petition.

Effective [Insert date 30 days from date of publication in the Federal Register], if you are petitioning in behalf of an alien beneficiary for any other nonimmigrant worker status covered by this application whose principal place of employment will be in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail your petition(s) to: INS Service Center, P.O. Box 152122, Department A, Irving, TX 75015–2122.

If you are petitioning in behalf of an alien beneficiary for a classification other than TN status whose principal place of employment will be in a state other than one of the states listed above, file your petition at the appropriate service center designated in the attached regular Instructions section entitled, Where to File.

(2) Form I–131, Application for Travel Document

An attachment will be affixed to the Instructions portion of Form I–131, (Rev. 12/10/91)N, to read as follows:

ATTENTION APPLICANT:

Fee.

Effective July 14, 1994, the fee for filing Form I–131, Application for Travel Document, has been increased to $70.00 (Seventy Dollars).

Where to File.

Advance Parole.

Effective [Insert date 30 days from date of publication in the Federal Register], if you are filing Form I–485 Application to Register Permanent Residence or Adjust Status at a service center, you may submit at the same time a Form I–131 application to obtain advance parole authorization at the same service center. If you have already filed your Form I–485 application at a service center and have not been advised that it has been transferred to a local INS office, you may mail the Form I–131 advance parole application to the same service center, or you may choose to submit it to the local INS office having jurisdiction over your place of residence. If the service center has advised you that it has transferred your Form I–485 application to a local INS office, you must file any subsequent Form I–131 application at the office to which the Form I–485 was transferred. If you are filing an application for advance parole authorization at a local office based on your application for adjustment of status which is pending at a service center, you must provide evidence (such as a Form I–797 Notice of Action) showing that your Form I–485 application for adjustment of status is pending with the INS.

If you are submitting the Form I–131 advance parole application to the Vermont, Texas, or California Service Center, use the same address which you used to mail the Form I–485 application. For the Nebraska Service Center, use the following address: INS Service Center, P.O. Box 87131, Lincoln, NE 68501–7131.

(3) Form I–140, Immigrant Petition for Alien Worker

An attachment will be affixed to the Instructions portion of Form I–140 (Rev. 12/02/91), to read as follows:

ATTENTION APPLICANT:

Fee.

Effective July 14, 1994, the fee for filing Form I–140, Immigrant Petition for Alien Worker, has been increased to $75.00 (Seventy-Five Dollars).

Where to File.

Effective November 29, 1996, if the petition is being filed in behalf of an alien whose principal place of employment will be in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail your application(s) to: INS Service Center, P.O. Box 152122, Department A, Irving, TX 75015–2122.

For a Form I–140 petition in behalf of an alien whose principal place of employment will be in one of the states listed above, this instruction supersedes all previous instructions regarding the service center at which such petitions may be filed.

(4) Form I–485, Application to Register Permanent Residence or Adjust Status

An attachment will be affixed to the Instructions portion of Form I–485 (Rev. 09–09–92)N, to read as follows:

ATTENTION APPLICANT:

Fee.

Effective July 14, 1994, the fee for filing Form I–485, Application to Register Permanent Residence or Adjust Status, has been increased to $130.00 (One Hundred and Thirty Dollars), except in the case of applicants under the age of 14 years, for whom the fee is $100.00 (One Hundred Dollars).

If your eligibility for adjustment of status is based upon section 245(i) of the Immigration and Nationality Act, see also Supplement A of the Instructions to Form I–485.

Where to File.

Effective November 29, 1996, if you are filing a Form I–485 application for adjustment of your status on the basis of any of the following approved employment-based visa petitions, mail your adjustment application to the service center which approved the original petition:

- Form I–140, Immigrant Petition for Alien Worker;
- Form I–526, Immigrant Petition by Alien Entrepreneur; or
- a Form I–360, Petition for Amerasian, Widow(er) or Special

Immigrant, which classifies you as a ‘‘special immigrant religious worker’’.

If an INS district or suboffice approved the employment-based petition, mail your adjustment application to the service center having jurisdiction over your place of residence. If you are filing a Form I–765 application for employment authorization or a Form I–131 application for advance parole authorization along with your adjustment application, please also read the separate filing instructions for those forms.

If you live in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, or West Virginia, mail your application(s) to: INS Service Center, P.O. Box 9485, St. Albans, VT 05479–9485.

If you live in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail your application(s) to: INS Service Center, P.O. Box 152122, Department A, Irving, TX 75015–2122.

If you live in Arizona, California, Guam, Hawaii, or Nevada, mail your application(s) to: INS Service Center, P.O. Box 10485, Laguna Niguel, CA 92607–0485.

If you live in Alaska, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, or Wyoming, mail your application(s) to: INS Service Center, P.O. Box 87485, Lincoln, NE 68501–7485.

(5) Form I–526, Immigrant Petition by Alien Entrepreneur

An attachment will be affixed to the Instructions Portion of Form I–526 (Rev. 12–02–91), to read as follows:

ATTENTION APPLICANT:

Fee.

Effective July 14, 1994, the fee for filing Form I–526, Immigrant Petition by Alien Entrepreneur, has been increased to $155.00 (One Hundred and Fifty-Five Dollars).

Where to File.

Effective November 29, 1996, if you are an entrepreneur whose commercial enterprise is located within the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail your petition to: INS Service Center, P.O. Box 152122, Department A, Irving, TX 75015–2122.

This instruction supersedes all previous instructions regarding the address of the service center at which Form I–526 petitions may be filed by an entrepreneur whose commercial enterprise is located in one of the states listed above. If you are an entrepreneur whose commercial enterprise is located within a state other than the ones listed above, refer to the instruction portion of Form I–526.

(6) Form I–765, Application for an Employment Authorization Document (EAD)

An attachment will be affixed to the Instructions portion of Form I–765 (Rev. 04–25–95), to read as follows:

ATTENTION APPLICANT:

Fee.

Effective July 14, 1994, the basic fee for filing Form I–765, Application for an Employment Authorization Document (EAD), has been increased to $70.00 (Seventy Dollars).

Where to File.

Effective November 29, 1996, if you are filing a Form I–485, Application to Register Permanent Residence or Adjust Status, at a service center, you may file a Form I–765 application at the same time. If you have already filed your Form I–485 application at a service center and have not been advised that it has been transferred to a local INS office, you may mail the I–765 application to the same service center; or you may choose to file the Form I–765 at the local INS office having jurisdiction over your place of residence, provided that the local INS office has the capability to issue an EAD. If the service center has advised you that it has transferred your Form I–485 application to a local INS office, you must file any subsequent Form I–765 application at that office. If you are applying for an EAD at local INS office based on your Form I–485 application for adjustment of status which is pending at a service center, you must provide evidence, such as a Form I–797 Notice of Action, showing that your Form I–485 application is pending.

For the Vermont and Texas Service Centers, use the same address to which you mailed Form I–485. For the California Service Center, use the following address: INS Service Center, P.O. Box 10765, Laguna Niguel, CA 92607–0765.

For the Nebraska Service Center, use the following address: INS Service Center, P.O. Box 87765, Lincoln, NE 68501–7765.

(7) Form I–829, Petition by Entrepreneur to Remove Conditions

An attachment will be affixed to the Instructions portion of Form I–829 (Rev. 01–07–94), to read as follows:

ATTENTION APPLICANT:

Where to File.

Effective November 29, 1996, if you are an entrepreneur whose commercial enterprise is located within the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail your petition to: INS Service Center, P.O. Box 152122, Department A, Irving, TX 75015–2122.

If you are an entrepreneur whose commercial enterprise is located within one of the states listed above, this instruction supersedes all previous instructions regarding the service center at which the Form I–829 petition may be filed. If you are an entrepreneur whose commercial enterprise is located within a state other than one of those listed above, refer to the instructions portion of Form I–526.

Conversion to Direct Mail Filing of Asylum and Refugee Adjustment Applications

In order to promote consistency of processing and to improve service to the public, the INS plans to consolidate at one service center the adjustment of status processing of all persons who were granted refugee and asylum status in the United States. As a first step in this plan, the INS previously arranged that the filing of all Form I–730 alien relative petitions by persons holding refugee or asylum status in the United States would be processed at the service center in Texas. However, workload growth and the expansion of Direct Mail, combined with serious facility limitations at that center, require that this processing be shifted elsewhere. Therefore the INS plans to propose, in a separate rulemaking, to shift this workload to the service center in Nebraska, and to shift the adjustment of status processing of refugees under section 209(a) of the Act, and of asylees under section 209(b) of the Act, to the Direct Mail program and to consolidate their processing at the Nebraska Service Center.

Dated: September 20, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–27837 Filed 10–29–96; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

National Skill Standards Board; Notice of Open Meeting

AGENCY: Office of the Assistant Secretary for Administration and Management, Labor.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the Goals 2000: Educate America Act of 1994, Title V, Pub. L. 103–227. The 27-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education and other key groups.

TIME AND PLACE: The meeting will be held from 8:00 a.m. to approximately 4:00 p.m. on Friday, November 22, 1996, in the Congressional Room at the Capital Hilton located at 16th & K Streets N.W., Washington, D.C.

AGENDA: The agenda for the Board Meeting will include discussion of: next steps and framework discussion following the Skill Standards Summit held in September.

PUBLIC PARTICIPATION: The meeting from 8:00 a.m. to 4:00 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact Holly Hemphill at (202) 223–8700, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Sally Conway, NSSB Outreach Director, at (202) 254–8628.

Signed at Washington, D.C. this 23rd day of October 1996.

James R. Houghton,

Chairman, National Skill Standards Board.

[FR Doc. 96–27788 Filed 10–29–96; 8:45 am]

BILLING CODE 4510–23–M

Office of the Secretary

Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Cooperation; Hearing on Submission #9601

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of hearing.

SUMMARY: The purpose of this notice is to announce a hearing, open to the public, on Submission #9601.

Submission #9601, filed with the U.S. National Administrative Office (NAO) by Human Rights Watch/Americas, the International Labor Rights Fund, and the Asociacion Nacional de Abogados Democraticos (National Association of Democratic Lawyers), involves labor law matters in Mexico and was accepted for review by the NAO on July 29, 1996. Notice of acceptance for review was published in the Federal Register on August 2, 1996.

Article 16 (3) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the NAO in accordance with U.S. domestic procedures. Revised procedural guidelines pertaining to the submission, review, and reporting process utilized by the Office were published in the Federal Register on April 7, 1994 (59 F.R. 16660). The guidelines provide for a hearing as part of the review.

DATES: The hearing will be held on December 3, 1996, commencing at 9:00 a.m. Persons desiring to present oral testimony at the hearing must submit a request in writing, along with a written statement or brief describing the information to be presented or position to be taken.

ADDRESSES: The hearing will be held in Washington, D.C. in Room N–5437, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Written statements or briefs and requests to present oral testimony may be mailed or hand delivered to the U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Requests to present oral testimony and written statements or briefs must be received by the NAO no later than close of business, November 22, 1996.

FOR FURTHER INFORMATION CONTACT: Irasema T. Garza, Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Telephone: (202) 501–6653 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Nature and Conduct of Hearing

As set out in the notice published in the Federal Register on August 2, 1996, the objective of the NAO's review of the submission is to gather information to better understand and publicly report on the Government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action, as set out in Article 3 of the NAALC, and on the steps the government of Mexico has taken to ensure that its administrative, quasi-judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent, in accordance with Article 5 of the NAALC.

The hearing will be conducted by the Secretary of the NAO or the Secretary's designee. It will be open to the public. All proceedings will be conducted in English, with simultaneous translation in English and Spanish provided. The public file for the submission, including written statements, briefs, and requests to present oral testimony, will be made a part of the appropriate hearing record. The public files will also be available for inspection at the NAO prior to the hearing.

The hearing will be transcribed. A transcript of the proceeding will be made available for inspection, as provided for in Section E of the procedural guidelines, or may be purchased from the reporting company.

Disabled persons should contact the Secretary of the NAO no later than November 15, 1996, if special accommodations are needed.

II. Written Statements or Briefs and Requests To Present Oral Testimony

Written statements or briefs shall provide a discussion of the information presented or position taken and shall be legibly typed or printed. Requests to present oral testimony shall include the name, address, and telephone number of the witness, the organization represented, if any, and any other information pertinent to the request. Five copies of a statement or brief and a single copy of a request to present oral testimony shall be submitted to the NAO at the time of filing.

No request to present oral testimony will be considered unless accompanied by a written statement or brief. A request to present oral testimony may be denied if the written statement of brief suggests that the information sought to be provided is unrelated to the review of the submission or for other appropriate reasons. The NAO will notify each requester of the disposition of the request to present oral testimony.

In presenting testimony, the witness should summarize the written statement or brief, may supplement the written statement or brief with relevant information, and should be prepared to answer questions from the Secretary of the NAO or the Secretary's designee. Oral testimony will ordinarily be limited to a ten minute presentation, not including the time for questions. Persons desiring more than ten minutes for their presentation should so state in the request, setting out reasons why additional time is necessary.

The requirements relating to the submission of written statements or briefs and requests to present oral testimony may be waived by the Secretary of the NAO for reasons of equity and public interest.

Signed at Washington, DC, on October 24, 1996.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 96–27787 Filed 10–29–96; 8:45 am]

BILLING CODE 4510–28–M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on November 12–13, 1996 at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3437A–D, Washington, DC. The meetings of the full Committee are open to the public and will begin at 9 a.m. on both days. The meeting will conclude at approximately 5:00 p.m. on November 12 and at approximately 12:00 p.m. on November 13.

On November 12, OSHA will update the Committee regarding the activities of the Directorate of Construction, make a statistical presentation, and brief the ACCSH regarding the recently issued final rule for scaffolds (subpart L). The Agency will also describe the status of its efforts regarding the Steel Erection Negotiated Rulemaking Advisory Committee, the draft proposed rule for fall protection (subpart M), confined spaces in construction, safety and health programs, the applicability of generic construction standards to the residential construction industry, voluntary protection programs, emergency exit standard, and the PSM Chemical list. In addition, NIOSH and the OSHA Training Institute will describe their recent construction-related activities.

After a lunch break, there will be presentations regarding federal procurement requirements, from approximately 1:30 p.m. to 5:00 p.m.

On November 13, the work group on Health and Safety for Women in Construction will report back to the full Advisory Committee. The full Committee will discuss the report from the work group, as well as federal procurement requirements and the activities of the OSHA State Plans. In addition, OSHA will report on the Agency's FY 1997 budget, outline OSHA's FY 1997 objectives, and indicate what assistance the Agency will need for ACCSH.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee. Individuals with disabilities who wish to attend the meeting should contact Tom Hall, at the address indicated below, if special accommodations are needed.

For additional information contact: Tom Hall, Division of Consumer Affairs, Room N–3647, Telephone 202–219–8615, at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC, 20210. An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, Telephone 202–219–7894.

Signed at Washington, D.C., this 25th day of October, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–27866 Filed 10–29–96; 8:45 am]

BILLING CODE 4510–26–M

LEGAL SERVICES CORPORATION

Audit Guide for LSC Recipients and Auditors

AGENCY: Legal Services Corporation.

ACTION: Correction.

SUMMARY: In a notice published on October 22, 1996 (61 FR 54816), the ACTION line reads ''Proposed Revisions to the LSC Audit Guide for Recipients and Auditors.'' It should have read ''Final Revisions to the LSC Audit Guide for Recipients and Auditors.''

October 24, 1996

Renée Syzbala,

Assistant IG for Legal Review.

[FR Doc. 96–27776 Filed 10–29–96; 8:45 am]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–31873; License No. 52–25114–01; EA 96–154]

José L. Fernández, M.D.,) San Juan, Puerto Rico; Order Modifying License (Effective Immediately)

I

José L. Fernández, M.D. (Licensee) is the holder of Byproduct Nuclear Material License No. 52–25114–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 35. The License authorized the possession and use of a total of two strontium-90 sources not to exceed 150 millicuries for the treatment of superficial eye conditions on humans at medical facilities located at 160 Ponce de León Avenue, Puerta de Tierra, San Juan, Puerto Rico and at La Palma Building, Suite 1–A, Peral-De Diego Street, Mayagüez, Puerto Rico. The License, originally issued to the Licensee on March 22, 1991, was amended on January 14, 1994, and expired on February 28, 1996. Pursuant to 10 CFR 30.36(c), the Licensee is authorized to possess but not use licensed material.

II

A routine, unannounced inspection of the Licensee's activities at the Mayagüez, Puerto Rico, facility was performed on October 18, 1995. During the inspection, an issue regarding the validity of the calibration of one of the Licensee's strontium-90 eye applicators and the possibility of multiple misadministrations was identified. The Licensee was unable to provide adequate documentation of source strength (i.e., a calibration from the National Institute of Standards and Technology or the source manufacturer).

A Confirmatory Action Letter (CAL) was issued on October 19, 1995, which confirmed the Licensee's agreement to discontinue any use of the strontium-90 eye applicator and place it in storage until: (1) a Quality Management Program (QMP) was submitted to the NRC, and (2) NRC approved resumption of operations. Subsequently, a calibration of the source located at the Mayagüez office was performed by the source manufacturer, which indicated that the source delivered approximately 53 centigrays per second, rather than the 24 centigrays per second that was assumed by the Licensee and used in treatments. The Licensee and the source manufacturer notified the NRC of the source dose rate on February 8, 1996.

Based on the fact that there was an error in the radiation dose rate and that this error caused patients to receive doses in amounts greater than that intended by the physician, the NRC issued a second CAL to the Licensee on February 9, 1996, to confirm that the Licensee would: (1) review, within 30 days, all patient radiation dose administrations performed at the Mayagüez office to identify any medical misadministrations; (2) comply with the notification and reporting requirements of 10 CFR 35.33 (within the time frame specified in the regulations) for each misadministration identified; and (3) maintain the strontium-90 sources in safe storage and refrain from using them until authorized by the NRC.

The Licensee notified the NRC, via the NRC Operations Center, on March 1, 1996, that 71 patients had received misadministrations. In a letter received on March 15, 1996, the Licensee notified the NRC, in accordance with 10 CFR 35.33, that all patients determined to have received a misadministration had been notified in writing by March 8, 1996. However, the written notification to the NRC failed to indicate whether the patients were notified within 24 hours of discovery, as required by 10 CFR 35.33(a)(3) and, if not, why not, and whether records of the misadministrations were retained by the Licensee as required by NRC requirements.

To verify the status of the Licensee's actions to identify misadministrations and to complete patient notifications, the NRC conducted a second inspection at the Licensee's Mayagüez facility on April 8–10, 1996. During the inspection, the NRC determined, based on its review of Licensee records, that the Licensee had failed to: (1) identify 16 additional misadministrations that occurred since October 1994, (2) notify, within 24-hours of discovery as required by 10 CFR 35.33(a)(3), three individuals of their misadministrations, (3) provide written reports of misadministrations to three individuals within the 15 days required by 10 CFR 35.33(a)(4), and (4) retain complete misadministration records as required by 10 CFR 35.33(b) in that only 67 records were documented instead of the 71 originally identified by the Licensee (the four records were misplaced by the Licensee after the misadministrations were identified).

In addition, during the October 1995 inspection, the Licensee informed the NRC that he had purchased the Mayagüez facility including one of the strontium-90 eye applicators in October 1994. Therefore, during the April 1996 inspection, the scope of the review was specifically confined to the period between October 1994 and October 1995. However, the NRC determined that the initial date of operation (i.e., start of the possession and use of byproduct material at the Mayagüez facility) was not October 1994, as originally related by the Licensee. The Licensee actually took possession of the byproduct material in January 1994, prior to the change in ownership in October 1994 and following receipt of the NRC's authorization to work under the Mayagüez license (amended on January 14, 1994). The NRC also determined that, during the period between January and October 1994, the Licensee's byproduct material had been used by an unauthorized user on at least two occasions, contrary to the requirements of 10 CFR 35.11. Moreover, the Licensee further identified 17 additional misadministrations that occurred during this period.

Subsequently, in a June 13, 1996 letter to the Licensee, the NRC documented the results of a June 11, 1996 telephone call in which Dr. Fernández agreed to hire an independent Health Physicist/ Radiation Physicist consultant with expertise in therapy dosimetry calculations to perform a review of the Licensee's patient administration records to identify all misadministrations, to assess the completeness and accuracy of misadministration records, to determine if any unauthorized uses of byproduct materials had occurred, and to assist the Licensee in submitting a report to the NRC on the results of these reviews. On July 10, 1996, the Licensee replied to the NRC's June 13, 1996 letter explaining Licensee difficulties in obtaining an independent consultant to complete the agreed-upon actions.

During a third inspection on August 7 and 9, 1996, the NRC determined that certain of the patients, who received misadministrations and should have been notified of the misadministration verbally and in writing, stated that they had not received such notification. In addition, during this inspection the NRC identified seven additional misadministrations at the San Juan facility resulting from the failure to correct source strength to account for radioactive decay. These misadministrations appear to involve underdosing patients.

By letter dated August 7, 1996, the NRC again requested the Licensee to provide to the NRC the name of a consultant and his credentials, and the Licensee's schedule for the completion of requested activities. The NRC also offered the Licensee the opportunity to participate in a predecisional enforcement conference. On August 20, 1996, the Licensee replied to the NRC's August 7, 1996 letter reiterating the Licensee's inability to obtain a consultant, stating the intention to terminate the License, and declining the invitation to participate in a predecisional enforcement conference.

As a result of the October 18, 1995, the April 8–10, 1996, and August 7 and 9, 1996 inspections, numerous violations were identified. The violations include the failure of the Licensee to: (1) establish and maintain a QMP, which included assurance that the radiation dose delivered was correct (i.e, the calibration of the applicator was correct), as required by 10 CFR 35.32 (the use of an inaccurate dose rate resulted in at least 104 misadministrations during the period January 1994 through October 1995); (2) maintain the security of byproduct material as required by 10 CFR 20.1801; (3) perform quarterly physical inventories of byproduct material as required by 10 CFR 35.59(g); (4) test sealed sources for leakage at intervals not to exceed six months as required by 10 CFR 35.59(b); (5) notify individuals of a misadministration within 24 hours of discovery as required by 10 CFR 35.33(a)(3); (6) provide written reports to individuals within 15 days of discovery of a misadministration as required by 10 CFR 35.33(a)(4); (7) maintain misadministration records as required by 10 CFR 35.33(b); and (8) amend his license prior to permitting an individual to work as an authorized user as required by 10 CFR 35.11.

Representatives from NRC Region II met with the Licensee on September 27, 1996, and again the Licensee informed the staff that it intended to obtain a consultant to review its activities. At that meeting, NRC provided the Licensee with a list of consultants in Puerto Rico that might be considered. On October 3, 1996, the Licensee called the NRC to request that the NRC provide another copy of the consultant's list because it had lost the one provided on September 27, 1996. At that time the Licensee stated that it planned to review the records, with the assistance of a consultant.

III

Based on the above, the Licensee has demonstrated a significant lack of control and attention to licensed activities. Specifically, the Licensee has failed to use accurate radiation dose rates for the strontium-90 eye applicators which resulted in numerous misadministrations and has repeatedly failed to fully evaluate and identify the number of misadministrations. This raises a significant concern as the patients, depending on the doses received, may develop complications, and without appropriate follow-up actions, these complications may go unrecognized and serious consequences may occur.

Furthermore, the Licensee has failed to: (1) establish and maintain a QMP as required by 10 CFR 35.32; (2) maintain the security of byproduct material as required by 10 CFR 20.1801; (3) perform quarterly physical inventories of byproduct material as required by 10 CFR 35.59(g); (4) test sealed sources for leakage at intervals not to exceed six months as required by 10 CFR 35.59(b); (5) notify individuals of a misadministration within 24 hours of discovery as required by 10 CFR 35.33(a)(3); (6) provide written reports to individuals within 15 days of discovery of a misadministration as required by 10 CFR 35.33(a)(4); (7) maintain misadministration records as required by 10 CFR 35.33(b); and (8) amend his license prior to permitting an individual to work as an authorized user as required by 10 CFR 35.11.

The Licensee has failed to honor its commitment to obtain a qualified consultant to review its patient records to assure as required by the Commission's regulations that all misadministrations are identified and proper patient notifications have been made. As a result, given the Licensee's past performance, the NRC does not have adequate assurance that all misadministrations have been identified, properly evaluated, and the involved patients properly notified.

It is imperative that licensees conduct activities in accordance with NRC requirements and with the requisite sensitivity and attention to detail, especially with respect to the amount of radiation delivered to individuals. In addition, the Commission must be able to rely on its licensees to provide complete and accurate information.

Consequently, I have concluded that the Licensee has failed to comply with a number of significant NRC requirements and that the actions Ordered in Section IV of this Order are required to protect the public health and safety. Given the number of misadministrations identified to date, the number of violations committed to date by the Licensee, the potential consequences to patients if not identified, notified, and monitored, the difficulty in locating patients over time, and the lack of meeting license requirements and commitments, I have concluded, pursuant to 10 CFR 2.202, that the public health and safety requires that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30 and 35, *it is hereby ordered, effective immediately, that license No. 52–25144–01 is modified as follows:*

A. Within 30 days of the date of this Order, the Licensee shall submit to the Regional Administrator, NRC, Region II, for approval, the credentials of an independent Health Physicist/Radiation Physicist Consultant with expertise in therapy dosimetry calculations.

B. The Licensee shall ensure that, within 45 days of acceptance of the consultant by the NRC, the Consultant:

1. Performs, independent of the Licensee, a review of all patient radiation doses administered by the Licensee at the Mayagüez facility to identify all medical misadministrations that occurred between January 1994 and October 1995 and assure that the dose records are complete and accurate.

2. Reviews the Licensee's misadministration records to verify completeness and accuracy in reference to the requirements of 10 CFR 35.33. To the extent possible, incomplete records shall be appropriately corrected. Where records of individuals may not be accurately reconstructed, the consultant shall assume that the individual has received a misadministration based on 53 centigrays per second, rather than the 24 centigrays per second that was assumed by the Licensee and used in treatments.

3. Reviews the Licensee's radiation dose administration records to determine if any additional unauthorized uses of byproduct material occurred between January 1994 and October 1995.

4. Reviews the Licensee's misadministration notification records to identify any misadministrations where notification was not provided to: (a) the NRC as required by 10 CFR Part 35.33(a)(2); and (b) all affected patients and referring physicians as required by 10 CFR 35.33(a)(3) and (4).

5. Assists the Licensee in the review and submission to the NRC of an updated/revised report pursuant to 10 CFR 35.33(a)(2).

C. Within 60 days of acceptance of the consultant by the NRC, the Licensee shall:

1. Submit an updated, final report to the NRC, Regional Administrator, Region II, of all misadministrations, pursuant to 10 CFR 35.33(a)(2), including a listing of any additional unauthorized uses of byproduct material that occurred between January 1994 and October 1995.

2. Notify the referring physician and individuals who received misadministrations, including those individuals whose records may not be accurately reconstructed, of the misadministrations, pursuant to 10 CFR 35.33(a)(3).

D. The Licensee shall not receive or use any licensed material and shall maintain the strontium-90 sources in locked, safe storage until the material is transferred to an authorized recipient.

E. The Licensee shall, within 90 days of this Order, transfer all strontium-90 sources in its possession to an authorized recipient and provide to the Regional Administrator, Region II, a completed Form-314.

The Regional Administrator, Region II, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and

Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Regional Administrator, NRC Region II, 101 Marietta St., NW, Suite 2900, Atlanta, GA 30323–0199, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 21st day of October 1996.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 96–27793 Filed 10–29–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No.: 040–07455]

Notice of Consideration of Amendment Request for Decommissioning the Whittaker Corporation's Greenville, Pennsylvania, Site, and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment of Source Material License No. SMA–1018, issued to Whittaker Corporation, Inc., to consolidate existing contaminated materials at its Greenville, Pennsylvania, site to a centralized location at this site and partially decommission the remediated areas.

In a letter dated May 24, 1995, the licensee requested that License No. SMA–1018 be amended to authorize the planned relocation of contaminated materials. The amendment would authorize the licensee to consolidate the waste to a centralized location in accordance with the Decommissioning Work Plan and partially remediate and decommission select locations of the Whittaker Corporation's Greenville, Pennsylvania, site. Radioactive contamination of the Whittaker Corporation's Greenville site resulted from the processing of ferro-columbium and ferro-nickel alloys by an aluminathermic melting process. The columbium ores and nickel scrap used in this process contained natural thorium and uranium. Concentrations of Ra-226 have also been noted in some of the waste slag. Manufacturing operations occurred from the 1960's through 1974.

The NRC will require the licensee to meet NRC's decommissioning criteria for those areas proposed to be released for unrestricted use. During remediation activities the licensee will also be required to maintain radiation exposures and effluents within NRC's radiation protection limits and as low as reasonably achievable.

Prior to the issuance of the proposed amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings of NRC's rules and practices for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this Federal Register notice.

The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington DC, 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's area of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1025(c).

In accordance with 10 CFR § 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Whittaker Corporation, 1955 N. Surveyor Avenue, Simi Valley, California 93063–3386, Attention: Mr. Richard Levin, Chief Financial Officer and General Counsel, and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings in 10 CFR Part 2, Subpart L.

For further details with respect to the proposed action, see the licensee's request for license amendment dated May 24, 1995, which is available for public inspection and copying at the

NRC's Public Document Room, 2120 L Street, N.W., Washington, DC 20555.

For additional information, contact Donna S. Moser, Health Physicist, Materials Decommissioning Section, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, (301) 415–6753.

Dated at Rockville, Maryland, this 23rd day of October 1996.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–27794 Filed 10–29–96; 8:45 am]

BILLING CODE 7590–01–P

Cancellation of Proposed Generic Communication; Licensee Qualification for Performing Safety Analyses (M91599)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of cancellation of proposed generic communication.

SUMMARY: The Nuclear Regulatory Commission (NRC) was preparing to issue a supplement to Generic Letter 83–11, Licensee Qualification for Performing Safety Analyses, for the purpose of presenting criteria that licensees could choose to comply with to verify to the NRC their qualifications to use approved codes and methods for performing safety analyses. By complying with these criteria, a licensee would eliminate the need to submit a topical report for qualifying their use of a previously approved methodology. A draft of the supplement and a notice of opportunity for public comment was published in the Federal Register (60 FR 54712) on October 25, 1995. Comments were received from 12 licensees, 3 fuel vendors, and 3 industry interest groups.

Because of issues that have arisen at a nuclear power reactor facility regarding the improper application of approved methods, and because of increased complexities in core reload analyses due to mixed core designs, the NRC has reevaluated its plans to issue this generic letter supplement. The NRC has concluded that the potential reduction in staff oversight which would result from its issuance is not justified. Therefore, the generic letter supplement has been cancelled.

DATES: (Not applicable.)

ADDRESSEES: (Not applicable.)

FOR FURTHER INFORMATION CONTACT: Laurence I. Kopp, (301) 415–2879.

SUPPLEMENTARY INFORMATION: (Not applicable.)

Dated at Rockville, Maryland, this 24th day of October 1996.

For the Nuclear Regulatory Commission.

David B. Matthews,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–27792 Filed 10–29–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

DATES: Weeks of October 28, November 4, 11, and 18, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 28

Thursday, October 31

11:00 a.m.—Affirmation Session (Public Meeting) (if needed).

Week of November 4—Tentative

Monday, November 4

2:00 p.m.—Discussion of Interagency Issues (Closed—Ex. 9).

Week of November 11—Tentative

Wednesday, November 13

2:00 p.m.—Briefing on Control and Accountability of Licensed Devices (Public Meeting) (Contact: John Lubinski, 310–415–7868).

3:30 p.m.—Affirmation Session (Public Meeting) (if needed).

Thursday, November 14

2:00 p.m.—Briefing on Spent Fuel Pool Study (Public Meeting) (Contact: Ernie Rossi, 301–415–7379).

3:30 p.m.—Discussion of Management Issues (Closed—Ex. 2).

Week of November 18—Tentative

Thursday, November 21

9:00 a.m.—Affirmation Session (Public Meeting) (if needed).

1:30 p.m.—Briefing by DOE on International Nuclear Safety Program (Public Meeting).

Friday, November 22

1:30 p.m.—Briefing on Integrated Materials Performance Evaluation Program (Public Meeting).

The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: October 25, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–27947 Filed 10–28–96; 11:28 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22296; International Series Release No. 1023; 812–10170]

Deutsche Bank AG; Notice of Application

October 24, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Deutsche Bank AG.

RELEVANT ACT SECTIONS: Order under section 6(c) of the Act for an exemption from section 17(f).

SUMMARY OF APPLICATION: Applicant seeks an order that would supersede an existing order granting conditional exemptive relief from section 17(f) of the Act. The requested order would allow certain foreign subsidiaries of applicant to maintain assets of registered investment companies in custody, in accordance with an agreement among applicant, the investment company (or its custodian), and the foreign subsidiary. The requested order would also allow these foreign subsidiaries to maintain such assets pursuant to a custody agreement between applicant and the investment company (or its custodian) and a separate subcustodian agreement between applicant and the foreign subsidiary.

FILING DATE: The application was filed on May 24, 1996 and amended on September 11, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 18, 1996 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant: Post Box D, 60262 Frankfurt-am-Main, Germany; cc: J. Eugene Marans, Esq., Cleary, Gottlieb, Steen & Hamilton, 1752 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Staff Attorney, at (202) 942–0552, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a bank organized and existing under the laws of Germany. Applicant is regulated in Germany by the Federal Bank Supervisory Office (Bundesaufsichtamt für Kreditwesen). Applicant is the largest banking institution in Germany and currently provides worldwide financial services to foreign governments, central banks, financial institutions, and corporate and retail customers. Applicant has shareholders' equity in excess of $200 million and, as of December 31, 1995, had consolidated worldwide assets of $491 billion.

2. In 1995, the SEC exempted applicant (the ''Existing Order'') [1] from section 17(f) of the Act to permit applicant to serve as custodian or sub-custodian of the securities and other assets of any management investment company registered under the Act other than an investment company registered under section 7(d) of the Act (a ''U.S. Investment Company''), and to maintain foreign securities and other assets in Malaysia with applicant (Malaysia) Berhad (''DBM'').

3. Applicant requests an order superseding the Existing Order and granting several requests for exemptive relief. First, under the relief requested, Assets (as defined below) could be maintained in the custody of an Exemptive Order Network Subsidiary (as defined below) in accordance with an agreement (''Delegation Agreement'') among applicant, the Exemptive Order Network Subsidiary, and a U.S. Investment Company or its custodian (Custodial arrangements under a Delegation Agreement are referred to as ''Tri-Party Arrangements'').

4. Second, as an alternative to Tri-Party Arrangements, Assets could be maintained in custody in accordance with an agreement (the ''Custody Agreement'') between (i) applicant and (ii) a U.S. Investment Company or its custodian, whereby applicant would act as the custodian or subcustodian of the Assets of the U.S. Investment Company and would delegate its responsibilities to its foreign subsidiaries under an agreement with such subsidiaries (''Subcustodian Agreement,'' and custodial arrangements under Custody and Subcustodian Agreements, ''Agency Custody Arrangements'').

5. Third, applicant seeks relief so that Assets could be maintained in custody with DBM, Deutsche Bank Argentina, S.A. (''DBA''), Deutsche Bank S.A.—Banco Alemao (Brazil) (''DBBA'', and together with DBA and DBM, the ''Foreign Subsidiaries'') and all additional foreign subsidiaries of applicant that do not meet the minimum shareholder equity requirement of rule 17f–5 (''Additional Foreign Subsidiaries,'' and together with the Foreign Subsidiaries, ''Exemptive Order Network Subsidiaries'') at such time as such Exemptive Order Network Subsidiaries meet the terms and conditions applicable to the provision of the custodial services under the Tri-Party Arrangements and Agency Custody Arrangements.

6. DBM, DBA and DBBA each is a subsidiary of applicant. DBM, DBA and DBBA are regulated as banking institutions by the central banks of Malaysia, Argentina, and Brazil, respectively. Each of the Foreign Subsidiaries offers custody services to support local and foreign investors. Each Exemptive Order Network Subsidiary satisfies the standards of rule 17f–5, except with respect to the minimum shareholder equity requirement.

7. For purposes of this application, the term ''Foreign Securities'' includes: (i) securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; and (ii) securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof or by any agency thereof or by any entity organized under the laws of the United States or of any state thereof which have been issued and sold primarily outside the United States. Foreign Securities, cash and cash equivalents are referred to collectively as ''Assets.''

Tri-Party and Agency Custody Arrangements

8. Pursuant to Tri-Party Custody Arrangements, Assets would be maintained in custody pursuant to a Delegation Agreement that would be required to remain in effect at all times during which the Exemptive Order Network Subsidiary fails to meet the minimum shareholders' equity requirements of rule 17f–5. Pursuant to such Delegation Agreement, applicant would undertake to perform specified custodial or subcustodial services and would delegate to the Exemptive Order Network Subsidiary such of the duties and obligations of applicant as would be necessary to permit the Exemptive Order Network Subsidiary to hold in custody in the country in which it operates Assets of U.S. Investment Companies.

9. Pursuant to the Agency Custody Arrangements, Assets would be maintained in the custody of an Exemptive Order Network Subsidiary only in accordance with a Custody Agreement that is required to remain in effect at all times during which such Exemptive Order Network Subsidiary fails to meet the minimum shareholders' equity requirements of rule 17f–5. Pursuant to the Custody Agreement, which would be between applicant and a U.S. Investment Company or its custodian, applicant would act as custodian or subcustodian of Assets. Under the terms of a Subcustodian Agreement with the Exemptive Order Network Subsidiary, applicant would additionally delegate such of its duties and obligations as would be necessary to permit the Exemptive Order Network Subsidiary to hold in custody in the country in which it operates Assets of U.S. Investment Companies or their custodians. Each Subcustodian Agreement would also explicitly provide that U.S. Investment Companies or their custodian, as the case may be, that have entered into a Custody Agreement with applicant are third

[1] *See* Deutsche Bank AG, Investment Company Act Release No. 21278 (Aug. 11, 1995).

party beneficiaries of such Subcustodian Agreement, are entitled to enforce the terms of such Subcustodian Agreement, and are entitled to seek relief directly against the applicable Exemptive Order Network Subsidiary or against applicant.

10. Applicant contends that Agency Custody Arrangements would be a more efficient arrangement for certain U.S. Investment Companies, since the protection afforded to such companies by applicant would be confirmed immediately upon execution of the Custody Agreement, rather than piecemeal through the time-consuming and more onerous process of entering into separate Delegation Agreements with the various Exemptive Order Network Subsidiaries. Applicant states that it would continue to offer the traditional Tri-Party Custody Arrangements for clients not desiring Agency Custody Arrangements.

Applicant's Legal Analysis

1. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including ''banks'' having at all times aggregate capital, surplus, and undivided profits of at least $500,000. A ''bank'', as that term is defined in section 2(a)(5) of the Act, includes: (a) a banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; and (c) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised or examined by state or federal authority having supervision over banks, and which is not operated for the purposes of evading the Act.

2. The only entities located outside the United States that section 17(f) authorizes to serve as custodians for registered management investment companies are the overseas branches of qualified U.S. banks. Rule 17f–5 expands the group of entities that are permitted to serve as foreign custodians. Rule 17f–5(c)(2)(i) defines the term ''Eligible Foreign Custodian'' to include a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated by that company's government or an agency thereof and that has shareholders' equity in excess of $200,000,000.

3. Applicant meets the requirements for an Eligible Foreign Custodian under the rule since it has shareholders' equity well in excess of the equivalent of $200,000,000, is organized and existing under the laws of a country other than the United States, and is regulated as a bank under the laws of Germany.

4. Each of the Foreign Subsidiaries also satisfies, and each of the Additional Foreign Subsidiaries will satisfy, the requirements of rule 17f–5 insofar as it is a banking institution incorporated or organized under the laws of a country other than the United States and is or will be regulated as such by that country's government or an agency thereof. However, none of the Foreign Subsidiaries meets, and none of the Additional Foreign Subsidiaries will meet, the minimum shareholders' equity requirement of rule 17f–5. Accordingly, none of the Foreign Subsidiaries is, and none of the Additional Foreign Subsidiaries will be, an Eligible Foreign Custodian under the rule, and, absent exemptive relief, they could not perform custodial or subcustodial services for U.S. Investment Companies.

5. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicant submits that its request satisfies this standard.

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed with respect to the Exemptive Order Network Subsidiaries will satisfy the requirements of rule 17f–5 in all respects other than with regard to the shareholders' equity of the Exemptive Order Network Subsidiaries.

2. Assets held in custody for U.S. Investment Companies or their custodians pursuant to Tri-Party Custody Arrangements will be maintained with an Exemptive Order Network Subsidiary only in accordance with a Delegation Agreement required to remain in effect at all times during which such Exemptive Order Network Subsidiary fails to satisfy all the requirements of rule 17f–5. Pursuant to such Delegation Agreement, applicant would undertake to provide specified custodial or subcustodial services and would delegate to such Exemptive Order Network Subsidiary such of applicant's duties and obligations as would be necessary to permit such Exemptive Order Network Subsidiary to hold in custody in the country in which it operates Assets of U.S. Investment Companies. The Delegation Agreement among applicant, such Exemptive Order Network Subsidiary and a U.S. Investment Company or its custodian would further provide that applicant's delegation of duties to such Exemptive Order Network Subsidiary would not relieve applicant of any responsibility to the U.S. Investment Company or its custodian for any loss due to such delegation, except such loss as may result from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) or other risks of loss (excluding bankruptcy or insolvency of the Exemptive Order Network Subsidiaries) for which neither applicant nor the Exemptive Order Network Subsidiary would be liable under rule 17f–5 (*e.g.*, despite the exercise of reasonable care, Acts of God and the like).

3. Assets held in custody for U.S. Investment Companies or their custodians pursuant to Agency Custody Arrangements will be maintained with an Exemptive Order Network Subsidiary only in accordance with a Custody Agreement required to remain in effect at all times during which such Exemptive Order Subsidiary fails to satisfy all the requirements of rule 17f–5. The Custody Agreement would be between applicant and a U.S. Investment Company or its custodian and would provide that applicant would act as the custodian or the subcustodian, as the case may be, of the Assets of the U.S. Investment Company and would be able to delegate its responsibilities to the Exemptive Order Network Subsidiaries. The Custody Agreement would further provide that applicant's delegation of duties to the Exemptive Order Network Subsidiaries would not relieve applicant of any responsibility to a U.S. Investment Company or its custodian for any loss due to such delegation, except such loss as may result from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) or other risks of loss (excluding bankruptcy or insolvency of the Exemptive Order Network Subsidiaries) for which neither applicant nor the Exemptive Order

Network Subsidiaries would be liable under rule 17f–5 (*e.g.,* despite the exercise of reasonable care, Acts of God and the like).

4. With respect to the Agency Custody Arrangements, applicant will enter into a Subcustodian Agreement with each Exemptive Order Network Subsidiary pursuant to which applicant will delegate to the Exemptive Order Network Subsidiary such of applicant's duties and obligations as would be necessary to permit the Exemptive Order Network Subsidiary to hold in custody in the country in which it operates Assets of U.S. Investment Companies or their custodians. Each Subcustodian Agreement will provide an acknowledgement by the applicable Exemptive Order Network Subsidiary that it is acting as a foreign custodian for U.S. Investment Companies pursuant to the terms of the order requested hereby. Each Subcustodian Agreement will also explicitly provide that U.S. Investment Companies or their custodians, as the case may be, that have entered into a Custody Agreement with applicant will be third party beneficiaries of such Subcustodian Agreement, will be entitled to enforce the term thereof and will be entitled to seek relief directly against the applicable Exemptive Order Network Subsidiary so acting as foreign custodian or against applicant.

5. Applicant will attempt to have such Subcustodian Agreement governed by New York law. However, if any Subcustodian Agreement is governed by the local law of the foreign jurisdiction in which the applicable Exemptive Order Network Subsidiary is located, applicant shall obtain an opinion of counsel from such foreign jurisdiction opining as to the enforceability of the rights of a third party beneficiary under the laws of such foreign jurisdiction. Applicant will not utilize Agency Custody Arrangements involving a Subcustodian Agreement governed by the law of a foreign jurisdiction that does not provide for the enforceability of third party beneficiary rights.

6. Applicant currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27807 Filed 10–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37861; File No. SR–DCC–96–09]

Self-Regulatory Organizations; Delta Clearing Corp.; Order Granting Approval of a Proposed Rule Change Relating to Securities Eligible for Margin

October 24, 1996.

On July 2, 1996, Delta Clearing Corp. (''DCC'') filed a proposed rule change (File No. SR–DCC–96–09) with the Securities and Exchange Commission (''Commission'') pursuant to section 19(b) of the Securities Exchange Act of 1934 (''Act'').[1] On August 16, 1996, DCC filed an amendment to the proposed rule change.[2] Notice of the proposal was published in the Federal Register on September 12, 1996, to solicit comments from interested persons.[3] No comments were received. As discussed below, this order approves the proposed rule change.

I. Description

DCC's proposal expands the permissible forms of margin that may be deposited by participants to include U.S. Treasury notes and bonds. Previously, DCC allowed only U.S. Treasury bills or central bank funds as margin collateral for trades in over-the-counter options and for repurchase and reverse repurchase (''repo'') agreements. With respect to options, participants also can continue to post margin in the form of cover (*i.e.,* Treasury securities that would be deliverable upon exercise of an option).

The proposal also changes the haircuts applicable to Treasury securities deposited as margin collateral. Previously, such securities were valued at the lesser of the market value or the par value if deposited as margin for options trades or 95% of the market value of deposited as margin for repo trades. Under the proposal, DCC will use the Commission's schedule for valuation of government securities as set forth in the Commission's uniform net capital rule.[4]

II. Discussion

Section 17A(b)(3)(F) of the Act requires that a clearing agency's rules be designed to ensure the safeguarding of securities and funds in its custody or control or for which it is responsible.[5]

While DCC participants trade and maintain inventory in a wide range of U.S. Treasury Securities, they do not always maintain inventory in U.S. Treasury bills. As a result, participants have incurred costs in meeting DCC's requirements that only U.S. Treasury bills could be posted as margin collateral. By expanding the types of collateral DCC will accept for margin purposes, the likelihood that participants will be able to fulfill their margin obligations from inventory is greatly increased. Furthermore, the combination of the highly liquid nature of U.S. Treasury notes and bonds and the haircuts imposed by DCC should allow DCC to accept these securities as margin collateral without adding additional risk to DCC's clearing and settlement operations.

Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and particularly with Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–DCC–96–09) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[1] 15 U.S.C. § 78s(b) (1988).

[2] Letter from John Grebenstein, Executive Director, DCC, to Michele Bianco, Division of Market Regulation, Commission (August 16, 1996).

[3] Securities Exchange Act Release No. 37639 (September 4, 1996), 61 FR 48186.

[4] 17 CFR 240.15c3–1 (1966). The schedule for valuation of government securities is set forth in paragraph (c)(2)(vi)(A)(1) of Rule 15c3–1.

[5] U.S.C. § 78q–1(b)(3)(F) (1988).

[6] 15 U.S.C. § 78s(b)(2) (1988).

[7] 17 CFR 200.30(a)(12) (1996).

[Release No. 34–37859; File No. SR–MSRB–96–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases, Pursuant to Rule G–14

October 23, 1996.

On August 29, 1996, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–96–10), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing an amendment to Board rule G–14 concerning reports of sales and purchases, and to the Rule G–14 Transaction Reporting Procedures. The purpose of the proposed rule change is to increase transparency in the municipal securities market by adding retail and institutional customer transaction information to the inter-dealer transactions currently included in the Board's Transaction Reporting Program (''Program''). The proposed rule change would require brokers, dealers and municipal securities dealers to (1) obtain an executing broker symbol, if one has not already been assigned, from the National Association of Securities Dealers (''NASD''); (2) provide the Board with the name and telephone number of a person responsible for testing the dealer's capabilities to report customer transaction information; (3) test its capabilities to report such information; and (4) report to the Board each day its municipal securities transactions with customers. The Board is requesting that the proposed rule change become effective according to the following proposed schedule:

- Obtain executing broker symbol—Thirty days after Commission approval of proposed rule change.
- Provide contact information—July 1, 1997.
- Test reporting capabilities—July through December 1997, on a schedule to be announced by the Board.
- Effective date for customer transaction reporting—January 1, 1998.

Although portions of the proposed rule change would not become effective until 1998, the Board is requesting Commission approval of the proposed rule change now to allow dealers adequate time to change their internal systems to report customer transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item VI below. The Board has prepared summaries, set forth in Sections A and B below, of the most significant aspects of such statements.

A. Purpose

The purpose of the proposed rule change is to increase transparency in the municipal securities market by adding retail and institutional customer transaction information to the inter-dealer transactions currently included in the Program. Under the proposed rule change, aggregate data about inter-dealer and customer market activity, and certain volume and price information about all transactions in frequently traded securities, would be disseminated to promote investor confidence in the market and its pricing mechanisms. The information would continue to be provided in the Program's daily report summarizing prices and volumes of trading in the municipal securities market during the previous day (the ''Daily Report'').[1] In addition, the transaction information on all transactions reported would be made available to regulatory agencies responsible for enforcement of Board rules, as a means to assist in market surveillance.

The Transaction Reporting Program—Overview

The Board has developed the Program to accomplish two objectives. The first is to increase the amount of information available about the market value of individual municipal securities, which has been a longstanding Board goal.[2] This concept of disseminating information to the public about transactions is now generally referred to by the Board as bringing ''transparency'' to the market. The second, but equally important, purpose of the Program is to provide a centralized audit trail of municipal securities transactions by making available to the NASD, the Commission, and other enforcement agencies a computer database reflecting all municipal securities transactions reported to the Board. This ''surveillance database'' helps meet the requirements of those organizations for an audit trail of transaction data, in connection with their surveillance of the market and inspection for compliance with Board rules and securities laws.

At this time, the Program is limited to inter-dealer transactions. Under Board rule G–14, dealers currently report their inter-dealer transactions to the MSRB each night through the automated comparison system operated by National Securities Clearing Corporation (''NSCC''). This reporting mechanism is convenient for dealers, since most of the trade data that must be reported to the Board has to be reported to NSCC in any event, for clearance and settlement purposes. The Board accomplishes the transparency function by making summary price and volume information available about these transactions on the Daily Report. If the inter-dealer trade data received by the Board indicates that there were four or more trades in an issue during that day, the next morning's Daily Report includes the high, low and average prices, and the total par traded, for that issue.[3] Prices and volumes for approximately 100 municipal securities issues are reported daily.

The Board's Daily Report Service currently has nine subscribers who receive electronic copies of the Daily Report each morning. Some subscribers, such as news services, redistribute the information broadly to their own clienteles. Paper copies of the Daily Report are available for inspection in the Board's Public Access Facility in Alexandria, Virginia. Information from the Daily Report is also utilized in the Public Securities Association's transparency initiatives: a generic AAA insured yield scale for publication in newspapers, and an 800-number investor service.[4]

The surveillance database contains information on all transactions reported to the Board and is not limited to transactions in issues traded four or more times. The database also contains information reported to the Board but not included in Daily Reports, such as dealer identities. The NASD currently uses the database to assist in its surveillance of the market and provides direct access to the database to

[1] The Board expects in the second quarter of 1997 to file and obtain Commission approval of an additional proposed rule change specifying revisions to the Daily Report format to accommodate customer trade information. The proposed rule change will also specify the fee for subscriptions to the Daily Report.

[2] *See* ''Planned Pilot Program for Publishing Inter-Dealer Transaction Information,'' *MSRB Reports,* Vol. 13, No. 3 (June 1993) at 3–6.

[3] Inter-dealer trades are reported publicly only if they were successfully ''compared'' on trade date in the automated clearance and settlement system, *i.e.,* if the parties to the trade agreed on trade details such as par value, price, and yield. Average prices are reported only for those trades with par value between $100,000 and $1 million.

[4] The generic AAA insured yield scale provides composite prices based on round lot trades ($250,000 or above) of municipal bonds which have coupons that reflect current market conditions. Certain yield scale data is published daily in a national newspaper, *USA Today* (*see, e.g.,* ''Key Indicators Thursday,'' *USA Today*, Friday, August 23, 1996, at 3B). the 800 number investor service enables investors to obtain benchmark price quotes relating to particular issues of municipal bonds. Both PSA services incorporate information from the Daily Report, and, in the case of the 800-number service, the caller receives prices from the Daily Report if they are available.

surveillance staff at its headquarters and two of its District Offices.

History of Program

In June 1994, the Board filed a proposed rule change to require that dealers report inter-dealer transactions and to operate a facility to report transaction information.[5] This filing described the computer system that would obtain inter-dealer trading data from dealers and the Board's plan ultimately to include institutional and retail customer transactions in the system, with the goal of making available transaction information that is both comprehensive and contemporaneous. In 1994 the Board stated its plan to implement the Program in four phases.[6]

Phase I—Inter-dealer transaction reporting, in which dealers would use NSCC's comparison system as the reporting vehicle.

Phase II—Institutional customer transaction reporting, in which dealers would use the clearance and settlement system as the transaction reporting mechanism for those trades. Since dealers already use this system to clear most of their transactions with institutional customers, it was though that this technique would provide a relatively quick and easy means to add institutional customer data to the Program. Time-of-trade reporting for inter-dealer and institutional customer trades also would be added in this phase.

Phase III—Retail customer transaction reporting. Because retail customer transactions are not currently reported by dealers to any central location, such reporting would have to be accomplished by dealers modifying their own trade processing systems to generate files of customer trades that could be transmitted to a new, customized computer system at a central site.

Phase IV—More contemporaneous trade reporting. Phases I–III would require dealer reporting of data by the end of trade date, with public dissemination on the next day.

Phase IV of the Program would be a mechanism to accomplish more contemporaneous reporting of data to the Board and to the public.

The Commission in November 1994 approved the proposed rule change for reporting inter-dealer transactions. Phase I Daily Reports went into production in January 1995. Two program modifications in Phase I were implemented over the next 18 months. A requirement to report the identify of the executing dealers in inter-dealer transactions (as opposed to only identifying the clearing dealers) became effective July 9, 1995[7] and a requirement to report the time of execution of inter-dealer transactions became effective July 1, 1996.[8]

Revised Strategy for Obtaining Customer Transaction Data

In preparation for adding institutional customer transaction data in Phase II, during the summer of 1995 the Board conducted a thorough review of institutional customer trade data being submitted by dealers to the centralized clearance and settlement system for institutional customer trades.[9] The review found that various aspects of this data made it unsuitable for transparency and surveillance support purposes. In general, the standards desired for timeliness, accuracy and completeness of trade data for transparency and market surveillance purposes were not met by the data flowing through the clearance and settlement system. The procedures for submitting, resubmitting and canceling trades are geared toward purposes of clearance and settlement, *e.g.*, if the customer's account number is unknown, dealers must delay submitting the trade to the clearance and settlement system until it is known. Dealers also must cancel and resubmit trade reports to the clearance system to correct settlement-related information, such as name or identification number of the customer's agent. A number of procedures and practices employed by dealers for submitting information to the clearance and settlement system appeared to be acceptable for that purpose but would have hindered the purposes of transaction reporting.[10]

The ability of the Board and the industry to overcome the problems with the use of clearance and settlement data for transaction reporting would have required changes in the clearance and settlement system and substantial changes in internal dealer systems and procedures that feed trade data to the clearance and settlement system. This would have been a costly and time-consuming project and, at its conclusion, it would immediately have been necessary to solve similar problems in collecting retail transaction data. The Board decided instead to combine institutional customer transactions with the planned retail trade reporting component of the Program so that retail and institutional customer transactions could be collected using a single mechanism designed specifically to accommodate the purposes of transaction reporting. This new plan, and the recognition of the full extent of changes that would need to be made by dealers to their operations, also necessitated a delay in the previously announced date for implementing institutional and retail transaction reporting.[11]

The Customer Transaction Reporting Program

Overview. Under the Board's revised approach, included in the proposed rule change, each dealer that effects transactions with customers would generate a file of certain required information about its customer transactions, in a specified format, and would transmit the file electronically to the MSRB by midnight of each trading day. The Board expects that most dealers will modify existing internal processing systems to produce the file required by the proposed rule change. This approach will be less costly to

[5] *See* Securities Exchange Act Release No. 34458 (July 28, 1994) at 3.

[6] *See* ''Reporting Inter-Dealer Transactions to the Board: Rule G–14,'' *MSRB Reports*, Vol. 14, No. 5, (December 1994) at 3–6.

[7] *See* Securities Exchange Act Release No. 35988 (July 18, 1995). The initial 1995 proposed rule change included a requirement to report executing dealer identities but did not specify which identification symbol was to be used. Some dealers have used NSCC clearing numbers, others NASD executing broker symbols, and others *ad hoc* symbols which they created themselves. Subsequent experience has shown that one identifier—the NASD executing broker symbol—is the most appropriate identifier for purposes of the Program. This is discussed below, under ''Dealer Reporting Requirements.''

[8] *See* Securities Exchange Act Release No. 37116 (April 16, 1996). The time-of-trade data is currently being stored in the database and in the near future will be made available on the surveillance screens.

[9] The centralized clearance system that dealers currently are required to use to help clear and settle institutional customer trades under rule G–15(d) is operated by the Depository Trust Company (DTC), and is generally known as the Institutional Delivery (ID) System. The ID System produces confirmations and acknowledgements of institutional trades and is linked to the automated system for book-entry settlement.

[10] The Board's review found that dealers submit a substantial portion of institutional trades to the clearance and settlement system after trade date, because of unknown customer account numbers, unknown settlement dates, and other reasons. The relatively high cancellation rate of submissions also creates questions about accuracy of the data available on trade date. Only a small fraction of dealer-submitted trade information is acknowledged as correct by the customer or its agent by the end of trade date. Of the remaining data, some is later acknowledged but a substantial portion is not acknowledged before settlement occurs. For those trades not acknowledged by customers on trade date, it is not possible, on the morning of the day after trade date (T+1), to distinguish between those transactions that were submitted with correct price and quantity and those which were not.

[11] Initially the Board had anticipated that retail customer transactions would be added to the Program by the end of 1996. Under the revised plan, this function would be delayed to January 1, 1998.

dealers than if the Board were to mandate the use of an independent transaction reporting system with stand-alone terminals that would have to be acquired by dealers and operated by dealer staff.

The dealer could use any available method to transmit the specified file to the Board's system. Most dealers are expected to use existing telecommunications links with NSCC for this purpose, but, alternatively, dealers with low volumes of customer trades may dial-in to the Board's system and upload the file by modem.

The Board plans to build a subsystem of the Transaction Reporting System for accepting customer transaction information. The resulting Customer Transaction Reporting Subsystem (''CTRS'') would encompass the system originally planned for retail transactions, but will process institutional customer transaction data as well. Therefore, dealers will have consistent operational requirements for reporting both retail and institutional customer transactions.

Trade Information to be Reported. Dealers would report approximately a dozen data items about each customer trade. These items, and their purpose in the customer transaction reporting subsystem, are as follows:

CUSIP Number. The number assigned by the CUSIP Service Bureau to identify the security. Other identification numbers will be considered errors. This item is needed for transparency and surveillance purposes.[12] Format: 9 alphanumeric characters.

Trade Date. The date the trade was executed. This item is needed for transparency and surveillance purposes and to determine compliance with the Board's rule G–14 requirement that the trade be reported on trade date. Format: 8 digits, CCYYMMDD.

Time of Trade Execution. The time of day, stated as Eastern time to the nearest minute, at which the trade was executed. This item is needed for surveillance purposes. Format: 4 digits, HHMM, Military format.

Dealer Identifier. The executing broker symbol, assigned by the NASD, that identifies the executing dealer. The dealer identity is needed for surveillance purposes. Format: 4 letters, *e.g.*, ABCD.

Buy/Sell Indicator. An indicator of the dealer's capacity as buyer or seller in the transaction. This item is needed for surveillance purposes. Format: ''B'' or ''S''.

Par Value Traded. The par value, in dollars, of the securities in the transaction. The maturity value of zero coupon securities will be given if it differs from the par value. Par value is needed for transparency and surveillance purposes. Format: 9 digit integer.

Dollar Price. The price of the security, in dollars per hundred dollars par value. Dollar price will be reported to the CTRS *excluding* any commission; the CTRS will include the commission (a separate item, described below) in dollar prices as shown in the Daily Reports. If the dollar price cannot be computed precisely because the settlement date of a ''when-issued'' transaction is unknown, the CTRS will estimate the dollar price based upon the reported yield and an estimated settlement date (see below). Dollar price is needed for transparency and surveillance purposes. Format: 9 digits plus explicit decimal point, *e.g.*, 100.123456 or 098.765432. The decimal point may ''float,'' *e.g.*, both 00099.5000 and 99.5000000 are valid.

Yield. The yield of the transaction, in percent, as reported on the confirmation. Yield will not be required on transactions in municipal variable-rate or collateralized mortgage obligations. Yield will be used to validate dollar price. Format: 8 digits plus explicit decimal point. Units are per cent, *e.g.*, 03.500000 denotes 3.5%.

Dealer's Capacity and, if Agent, Commission Charged. The dealer's capacity indicates whether the dealer acted as agent or principal toward the customer. It is needed for surveillance purposes. Commission, if any, will be stated as dollars per hundred dollars par value, and is needed for computing the net price including commission. Format ''A'' or ''P''. Commission: 7 digits plus explicit decimal, *e.g.*, 00.05000.

Settlement Date. The date the transaction is due to settle. The dealer must provide the settlement date if it is known. If the settlement date for an issue in ''when-issued'' status is not known at the time the trade information is reported, the CTRS will estimate it as 20 business days after the first trade in the issue, until the actual settlement date for the issue is determined. This item will be used to validate the consistency of dollar price and yield as reported. Format: 8 digits, CCYYMMDD.

Dealer's Control Number for Transaction. An identifier, assigned by the executing dealer, sufficient to identify the transaction from among the dealer's other transactions. Dealers may use any coding method, provided that no two transactions done by a dealer within a three-year period have the same control number. This item is needed for surveillance purposes (so that submissions can be associated with entries in the dealer's record-keeping system) and for data management (so that a dealer may identify a transaction to be revised after it is first reported to the CTRS). Format: 20 alphanumeric characters.

Cancel/Amend Code and Previous Record Reference. An indicator of whether the dealer is reporting an update to data previously reported about a transaction, and, if necessary, the dealer's control number for the transaction whose data is to be updated. Cancel/Amend code format: ''F'': First report of this transaction to the MSRB. ''C'': Cancel the record of the trade identified by the dealer's control number. ''A'': Amend the record of the trade identified by the dealer's control number. ''V'': Verification that a record of a transaction containing possible errors is correct.

Use of Intermediaries. An important feature of the Program is a provision for dealers to submit customer transaction data to the Board through an intermediary that could handle the technical details of preparing files in the specified format and/or the function of transmitting correctly formatted files to the CTRS. For example, clearing dealers (dealers that submit transactions for clearance and settlement on behalf of other dealers) could report transactions on behalf of the dealers for whom they clear. Clearing dealers themselves may use service bureaus (firms offering confirmation or other processing services) to collect, format and transmit data to the Board. By using the same telecommunication links for CTRS data as for clearing data, the expense to dealers of customer transaction reporting would be minimized.

The Submission Process. Dealers or intermediaries will perform two steps in submitting customer trade data to the Board. First, they will prepare a file containing the necessary information in the physical format specified by the Board. Second, they will transmit the file to the CTRS.

The dealer may extract the necessary information from its record-keeping or automated confirmation systems, or may key in the data to a program designed specifically to create a file in the correct format. For dealers who wish to key in data on a personal computer, data entry and editing software will be made available by the Board. It is expected that only dealers with low volumes of trades will use this method, since higher-volume dealers already store

[12] Items needed for transparency purposes will appear on the public Daily Report. Items needed for surveillance purposes will be stored the Board's surveillance database and used by the enforcement agencies for audit trail construction and other enforcement purposes.

most of the required trade data in existing computer systems and are expected to adapt those systems for reporting purposes rather than manually re-enter the data into another system.

For file transmission, the Board expects most dealers to use intermediaries, as discussed above. Existing links between dealers and NSCC are expected to be used to transmit most files.[13] If a dealer does not wish to use a intermediary to transmit files to the Board, the dealer will be able to upload files directly to the CTRS from a personal computer. The Board will make telecommunications software available for uploading files, which will run on the dealer's computer under Microsoft Windows. To upload files by dialing in, a dealer will need a modem and any version of Windows supported by Microsoft Corporation. The Board expects this option to be utilized only by lower-volume dealers because most high-volume dealers are already linked with NSCC. The CTRS is being designed initially with sufficient capacity for up to 100 dial-in submissions per day, although fewer are expected.

Errors and corrections. The system will send messages to dealers, by facsimile, acknowledging receipt of a day's file and identifying records that appear to be in error or questionable. (The system also will make available an electronic copy of the receipt and error message file, which the dealer may optionally download to its computer if it prefers.) Dealers will submit corrections using a method similar to that for reporting trades. A dealer may also ''cancel'' a trade, that is, inform the system that a trade previously reported did not occur or was cancelled by the parties. Dealers will report only changes relevant to the Board's transaction reporting purposes, for example, a change in the price or par value of a trade.

Dealer Reporting Requirements

The proposed rule change would require dealers to report their customer transactions to the Board by midnight of trade date. Dealers also would be required to report corrections and cancellations as soon as the need for such change is known. Dealers would be able to make changes to data previously reported for two months after the trade date.

The proposed rule change would also require each dealer to use a NASD four-letter executing broker symbol (*e.g.*, ''ABCD'') to identify itself as the party that effected a transaction. Dealers reporting inter-dealer trades to the Board through NSCC currently are required by rule G–14 to identify the executing brokers (as well as the clearing brokers), but the specific symbol to be used is not specified in rule G–14 procedures. Specifying the use of the NASD executing broker symbol will enable users of the surveillance database to determine the executing dealer unambiguously in all cases. The NASD assigns such symbols, on request, to all dealer firms including bank dealers. A dealer not already assigned such a symbol will be required to obtain one from the NASD. Executing broker symbols are already in wide use by many dealers. Since identification symbols are already needed for the audit trail of inter-dealer transactions and it would improve the functions of the surveillance database for this uniform identifier to be used, the Board requests that this provision become effective 30 days after Commission approval of the proposed rule change.

The requirement to report customer trades would become fully effective January 1, 1998, with a testing requirement, discussed below, effective beginning July 1997.

Proposed Mandatory Testing

Dealers will need to test their own trade processing systems to ensure they can produce files containing the required information in the proper format. Such testing would clarify system input specifications with dealers and ensure that dealers' systems are able to correct erroneous input. Mandatory testing by dealers is the only way to ensure that dealers' systems are ready to submit customer trade data before the reporting requirement becomes effective.

To begin system operations by January 1, 1998, the proposed rule change would require testing with dealers between July and December 1997. Procedures would involve testing first by the dealers with the greatest volume of customer trades, followed by the lower-volume dealers. Each dealer would be required to report all its customer trades, on a test basis, to the Board for a specified time. None of the test submissions would be publicly reported or provided to the enforcement agencies. The Board would inform the dealers of any problems found, and the dealer would re-test its system and reporting procedures within two months of the initial run. The proposed rule change would require dealers to provide the Board with the name of a dealer staff person responsible for testing, and to participate in a testing program, which would begin in July 1997. The Board plans to test first with larger submitters, giving consideration to the test readiness of individuals firms.

The Daily Report

All transactions in municipal securities will be recorded in the surveillance database. The Daily Report, however, will not include price data on every transaction, since it reports on those issues that were traded most frequently during the previous day. As noted above, currently the Daily Report includes summary information on those securities which were traded four or more times the previous business day. Including customer trades will substantially increase the number of issues trading above this ''reporting threshold.'' It is impossible at this time, however, to predict quantitatively the effect on the Daily Report of including retail customer trades, since there is no existing source of comprehensive retail transaction information in the industry. The Board is requesting and has begun receiving samples of customer trade data from certain dealers, on a voluntary basis, and has begun to measure the frequency with which issues are traded, trade sizes, and other factors needed to structure the Daily Report to include customer transaction data. The Board plans to determine the reporting threshold and other formatting aspects of the Daily Report by mid-1997 and will describe it in an additional proposed rule change, to be filed before system operations begin.[14]

Customer Transaction Data as a Measure of Dealers' Market Participation

The Board currently levies four types of fees that are generally applicable to dealers. Rule A–12 provides for a $100 initial fee paid once by a dealer when it enters the municipal securities business. Rule A–14 provides for an annual fee of $200 from each dealer that conducts municipal securities business during the year. Rule A–13 provides for an underwriting fee based on the par value of a dealer's participation in primary offerings of municipal securities, and for a transaction fee based on the par value of a dealer's transactions reported to the Board. The transaction fee is currently .0005 per cent (one-half cent per $1,000) of the total par value of inter-dealer sales of municipal securities, since the current

[13] The Board currently is in discussion with NSCC and it appears that NSCC will offer telecommunications services to dealers for customer transaction reporting.

[14] The planned proposed rule change will also specify the fee for subscriptions to the Daily Report, along with any Program modifications found to be necessary.

reporting requirement applies only to inter-dealer trades.

The Board's goal in allocating fees among dealers is to reflect as accurately as possible each dealer's involvement in the municipal securities market. The Board believes underwriting activity and inter-dealer transaction volume currently are the best available and auditable means upon which to base fees, but the Board has noted that these measures of dealer activity do not track every important activity in the market.[15] When customer transaction data becomes available, the Board will consider revising the basis of the transaction fee to include all trades in municipal securities, not just the inter-dealer transactions as under the current transaction fee structure.

B. Statutory Basis

The Board has proposed the rule change pursuant to Section 15B(b)(2)(C) of the Act, which requires, in pertinent part, that the Board's rules:

> * * * be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating * * * transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. * * *

III. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

IV. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

The 1995 Request for Comments

The Board published a notice in February 1995,[16] requesting comment on the institutional customer transaction phase of the Program and proposing that, to produce the Daily Report in this phase, institutional customer and inter-dealer transactions would be reviewed together to identify those issues in which four or more transactions occurred on a given day. Once these frequently traded issues were identified, the prices for all transactions in the issue would be reviewed to determine the high and low prices, which would be reported on the next day. An ''average price'' would be computed based upon all transactions in that issue involving par values between $100,000 and $1 million, if any. In response, six comment letters were received from the following:

A.G. Edwards & Sons, Inc. (''Edwards'') [17]
Goldman, Sachs & Co. (''Goldman'')[18]
Kemper Securities, Inc. (''Kemper'')[19]
The Public Securities Association (''PSA 1995'') [20]
The Regional Municipal Operations Association (''RMOA'')[21]
Applied Financial Management, Inc. (''Applied Financial'')[22]

The Board described its revised plan to implement reporting of both institutional and retail customer transactions in a January 1996 notice in which preliminary technical specifications were also proposed for comment.[23] In response, three comment letters were received from the following:

The Public Securities Association (''PSA 1996'')[24]
The Regional Municipal Operations Association (''RMOA 1996'')[25] and Zia Corporation (''Zia'')[26]

Discussion of Comments

Use of Institutional Transaction Data from the Clearance and Settlement System. One commentator [27] stated its preference that the Board use institutional trade data reported by dealers to the clearance and settlement system (referred to in its letter as the Depository Trust Company's (''DTC'') Institutional Delivery [ID] System). Another commentator [28] recommended that the DTC develop a program for reporting retail customer transaction data. A commentator[29] suggested that the Board focus on reporting institutional customer transactions because they are ''much more illustrative of the activities of the municipal market'' than are retail transactions.

Although the Board had hoped to use clearance and settlement data for institutional customer transaction reporting, after a careful review the Board found that various aspects of the clearance and settlement system data make it unsuitable for transparency purposes.[30] Regarding the suggestion that the Program should focus on institutional, rather than retail, customer transactions, the Board notes the retail transactions are a necessary and integral part of the Program, both for disclosing prices in the Daily Report and for constructing the comprehensive audit trail.

The Daily Report. The Board received a variety of suggestions for changing the Daily Report. Some commentators [31] suggested reporting individual transactions, while others [32] suggested combining data from all trades falling within a given par value range.

The Board does not intend to raise the threshold of four or more trades a day for Daily Report purposes. At this time, however, it is impossible to predict how the inclusion of retail customer data will affect the Daily Report, since retail transactions are not available to conduct a simulation. The system is being designed to have the capability to produce the Daily Report in various formats, based upon alternative criteria, so that this decision can be made when more information is available. As noticed above, the Board has deferred a decision on the Daily Report criteria until next year, by which time sample customer trade data, provided voluntarily to the Board by several dealers for study, can be analyzed. The Board, at that time, will reconsider all of the comments received on the structure of the Daily Report.

[15] *See* Securities Exchange Act Release No. 36492 (November 20, 1995) at 4–5 and ''Revisions to Board Fee Assessments: Rules A–13, A–14 and G–14,'' *MSRB Reports*, Vol. 16, No. 1 (January 1966) at 29.

[16] ''Transaction Reporting Program for Municipal Securities: Phase II,'' *MSRB Reports*, Vol. 15, No. 1 (April 1995) at 11–15.

[17] Letter from Douglas L. Kelly, Vice President, A.G. Edwards & Sons, Inc. to Larry M. Lawrence, Policy and Technology Advisor, MSRB (May 30, (1995).

[18] Letter from Edward C. Briscotti, Vice President, Goldman, Sachs & Co., to Judith A. Somerville, Uniform Practice Specialist, MSRB (May 31, 1995).

[19] Letter from Kathleen M. Burns, Municipal Bond Dept., Kemper Securities, Inc., to Hal Johnson, Deputy General Counsel, MSRB (August 22, 1995).

[20] Letter from Joseph W. Sack, Senior Vice President, Public Securities Association (''PSA 1995'') to Larry M. Lawrence (June 2, 1995).

[21] Letter from Bruce L. Vernon, Regional Municipal Operations Association (''RMOA 1995'' to Judith Somerville (June 13, 1995).

[22] Letter from Ron Moore, Senior Market Analyst, applied Financial Management, Inc. (''Applied Financial'') to Larry M. Lawrence (undated).

[23] ''Reporting Customer Transactions in Municipal Securities: Rule G–14,'' *MSRB Reports*, Vol. 16, No. 1 (January 1996) at 15–18, and ''Customer Transaction Reporting: Proposed Technical Specifications and Request for Comment,'' *Ibid.* at 19–22.

[24] Letter from George Brakatselos, Vice President, Public Securities Association, to Larry M. Lawrence (May 2, 1996).

[25] Letter from Executive Committee of the Regional Municipal Operations Association to Harold Johnson (March 22, 1996).

[26] Letter from Glenn Burnett, President, Zia Corporation to Larry M. Lawrence (July 2, 1996).

[27] RMOA 1996

[28] Goldman

[29] RMOA 1995

[30] *See* above and *see also* ''Reporting Customer Transactions in Municipal Securities: Rule G–14,'' *MSRB Reports*, Vol. 16, No. 1 (January 1996), at 16 and footnote 6.)

[31] Kemper, Zia and Applied Financial

[32] PSA 1995, PSA 1996

Transactions to be Reported. The Board's 1996 request for comment asked whether transactions in certain types of municipal securities should be excluded from reporting. The securities that might be excluded are those that may require special processing by dealer systems, *e.g.*, variable-rate securities, collateralized mortgage obligations, securities prepaying principal and securities trading ''flat.'' One commentator [33] stated that all municipal transactions should be included in the scope of transactions reported, except those in securities that are ineligible for CUSIP number assignment. The proposed rule change would require dealers to report customer transactions in all securities eligible for CUSIP number assignment. The Board notes, however, that it may be impossible, at least initially, to calculate meaningful and reliable dollar prices from yield for some of these instruments with non-standard payment structures. Thus, although the separate trade information will go into the surveillance database for audit trail purposes, some transactions in municipal securities with non-standard payment or call features may not be included as part of the Daily Report.

Data Items to be Reported by Dealers. One commentator [34] stated its belief that there is no need for data items in addition to those in the request for comment. The Board has determined that, with one exception, the data items proposed in the January 1996 notice are sufficient for processing customer transaction data and has included those items in the proposed rule change.[35]

Estimating the Settlement Date. Transactions involving the distribution of new issue securities sometimes are effected before the first settlement date is determined. Often the parties to such ''when-issued'' transactions agree on the yield of the transaction when effecting the trade, and calculate the corresponding dollar price after the settlement date is determined. The proposed rule change would require the reporting of such transactions on trade date. The system is designed to estimate the dollar price for next-day reporting based upon the reported yield and an estimated settlement date. The 1996 request for comment asked whether the dealer or the Board should estimate the settlement date, and a commentator [36] proposed the date should be estimated by the Board. Accordingly, the Board will estimate the settlement date as the date of first trade plus 20 business days.

Information about Calls or Pre-refunded Securities. One commentator [37] suggested that the Board require the dealer to report whether the security was priced to call or was known to be pre-refunded, in order to be sure the dealer took such information into account. The planned system is designed to verify the reported dollar price and yield by recalculating the dollar price from the reported yield, using data about the security obtained from one or more securities information vendors. The calculations should be the same if issue information used by the Board and the dealer is the same. If the system's recalculated price indicates there may be erroneous input caused by typographical errors, the dealer will be informed and the transaction will not be included in the Daily Report. Therefore, it is unnecessary to request call or pre-refunding information from the dealer as part of trade input.

Program Costs and ''Open Systems'' Approach. One commentator [38] expressed concern that the Board remain sensitive to the cost to dealers of reporting customer transactions. This commentator also commended the Board for taking the ''open system'' approach to provide flexibility to dealers and intermediaries in configuring their reporting systems.

The Board notes that the system design and approach to the Transaction Reporting Program are intended to minimize long-term resource commitments from dealers. Instead of requiring dealers to lease a terminal from the Board and hire personnel to input transactions, the program is designed so that dealers can generate nightly files of trade data from their existing trade processing systems. In addition, NSCC has stated its willingness to allow dealers to utilize existing telecommunications links as the means for transmitting these files to the Board. The Board, as well as dealers, will benefit from dealers using existing links with NSCC, since the Board's system then will need less hardware and staff to support dial-in submissions.

Standardized Format for Vendor Reports. A commentator [39] posited that the Board may desire to have uniformity among transaction reports distributed by information vendors, and recommended that the Board impose standards for vendor-produced ''Official MSRB Daily Reports.'' The Board desires to provide maximum flexibility for value-added vendors to reformat the public transaction information to meet the needs of the marketplace, and does not intend to define an ''official'' report format for redistribution of data obtained via its Daily Report Service.

V. Date of Effectiveness of the Proposed Rule Change and Timing

For Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–96–10 and should be submitted by November 20, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27806 Filed 10–29–96; 8:45 am]

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[33] PSA 1996

[34] PSA 1996.

[35] The exception is the ''cancel/amend code,'' an indicator whether the dealer is reporting a change to data previously reported about a transaction. This indicator was not specified in the 1996 notice, but is logically necessary to enable the dealer to correct erroneous reports made to the Board.

[36] PSA 1996.

[37] Zia.

[38] PSA 1996.

[39] Applied Financial.

[Release No. 34–37860; File No. SR–PSE–96–37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Its Annual Fee for Registered Representatives and Registered Options Principals

October 23, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 17, 1996, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to modify its Schedule of Rates for Exchange Services by increasing from $5 to $8 its annual fee for new applications, maintenance, and transfer of registration status for each Registered Representative (''RR'') and each Registered Options Principal (''ROP'') who is required to register with and be approved by the Exchange pursuant to PSE Rules 9.26 and 9.27. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Schedule of Fees and Charges for Exchange Services

* * * * *

PSE General Membership Fees

* * * * *

Regulatory Fees

Focus Filing Fee—No change.

Registration Fee—*$8* [$5] annual fee for new applications, maintenance, or transfer of registration status for each Registered Representative and each Registered Options Principal (collected by the NASD).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE Schedule of Rates currently provides for a $5 fee to be paid by member organizations to maintain, apply for, and transfer RR or ROP registrations.[4] The Exchange is now proposing to raise this fee from $5 to $8 in order to offset the Exchange's costs relating to its market surveillance programs and routine Designated Examining Authority (DEA, activity. The proposal is consistent with Section 6(b) of the Act, the general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act and subparagraph (e) or Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–37 and should be submitted by November 20, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27810 Filed 10–29–96; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

[3] The proposal was submitted to the Commission on October 2, 1996, however it was not complete. The PSE subsequently submitted Amendment No. 1 to the filing to include the missing information. This document provides notice of the filing as amended. Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to Karl Varner, Staff Attorney, Division of Market Regulation, SEC, dated October 16, 1996.

[4] *See* Exchange Act Release No. 29954 (November 18, 1991), 56 FR 59315 (November 25, 1991) (notice of filing and immediate effectiveness of SR–PSE–91–37); *see also* Exchange Act Release No. 31425 (November 9, 1992), 57 FR 54271 (November 17, 1992) (notice of filing and immediate effectiveness of File No. SR–PSE–92–31).

[Release No. 34–37858; File No. SR–Philadep–96–16]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Procedure to Establish a Direct Registration System

October 23, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 16, 1996, Philadelphia Depository Trust Company (''Philadep'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared

[1] 15 U.S.C. 78s(b)(1) (1988).

primarily by Philadep. On October 17, 1996, Philadep filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadep's proposed rule change will establish (1) a new service called the Direct Registration System (''DRS'') and (2) a new category of participants whose use of Philadep's services will be limited to DRS.

II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In December 1994, the Commission published a concept release on DRS which solicited comments on DRS as a way to offer investors a method whereby they could maintain their positions in corporate equities and debt securities in book-entry form directly on the books of the issuer.[4] In November 1995, a joint industry committee comprised representatives of the Securities Transfer Agent Association (''STA''), Corporate Transfer Agents Association, Inc. (''CTA''), Securities Industry Association (''SIA''), and the depositories prepared a process outline for DRS.[5] In May 1996, the joint committee informed Chairman Levitt that a consensus had been reached regarding the prospective operation of DRS.[6]

In accordance with this consensus, Philadep will implement certain procedures to establish DRS.[7] The transfer agents of issuers interested in participating in DRS must join DTC and Philadep as limited participants. In order for transfer agents to participate in this service, they must have certain electronic interfaces with Philadep, commonly known as fully automated securities transfer (''FAST'') interfaces. As a depository participant, the transfer agent will be able to engage in book-entry movements of positions between the transfer agent's DRS participant account and a broker/dealer's account. Once the transfer agents have supplied Philadep with the DRS issue, Philadep will add the indicator to its Security Profile On-Line (''SPOL'') system to reflect that the issue DRS eligible and to notify the respective participants accordingly. Once Philadep supplies information to the transfer agent or issuer, the transfer agent will adjust the DRS position and decease the depository FAST account on its books. To execute any withdrawal/transfer (''WT'') activity, participants must supply Philadep with an appropriate code specifying a DRS account or a certificate. Absent the proper code, Philadep will not process these requests. Participants must use indicators to operate the automated WT file to (i) register positions on the books of the issuer, (ii) issue a physical certificate, (iii) indicate that the submitting broker for the WT request is serving in a correspondent capacity (known as third party transfers) and (iv) reverse the prior DRS transaction.

When the transfer agent completes a certificate request for a DRS issue, the transfer agent will return the certificate to Philadep according to the standard procedure for these securities' shipments. If the investor requests to hold his position on the books of the issuer through DRS, the agent will establish the position, will mail the transaction advice directly to the investor, and will confirm such activities to Philadep. Moreover, Philadep will confirm to its participant that the account has been established providing the date and the DRS account number to such participant.

In the event that an investor wants to sell the position, the transfer agent will provide miscellaneous delivery order (''MDO'') instructions and the proper reason code to move the position into the appropriate account at Philadep. The transfer agent will increase depository FAST account at Philadep and notify Philadep to increase its transfer agent participant account. Concurrently, the agent must provide Philadep with the CUSIP number, quantity, broker/dealer identification number, broker/dealer customer account number, and any other miscellaneous information in the comments field. If the receiving participant does not recognize the position, it may deliver the position back to the transfer agent's Philadep account. At the end of the processing day, Philadep will reverse the transfer agent's Limited Participant account and return all positions. Philadep will produce an activity report for all movements.

This proposed change complies with Section 17A(a)(1) of the Act[8] in that it promotes efficiencies in the prompt and accurate clearance and settlement of securities transactions and funds in Philadep's custody and under its control. Individual investors electing book-entry positions on the books of the issuers will be able to subsequently arrange to have such positions transferred electronically to banks or broker-dealers in connection with sales or other dispositions of the securities. By effecting transfers through automated linkages between broker-dealers, transfer agents, and Philadep, the DRS service to be offered by Philadep will promote efficiencies in the clearance and settlement system. Moreover, DRS will foster cooperation and coordination between Philadep and other entities engaged in the clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Competition

Philadep does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been received. Philadep will notify the Commission of any written comments received by Philadep.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

[2] Letter from J. Keith Kessel, Compliance Officer, Philadep, to Jerry W. Carpenter, Assistant Director Division of Market Regulation, Commission, (October 16, 1996).

[3] The Commission has modified parts of these statements.

[4] Securities Exchange Act Release No. 35038 (December 1, 1994).

[5] ''Direct Registration System: A Process Outline'' (November 1995).

[6] Letter from representatives of the joint committee to Arthur Levitt, Chairman, Commission, (May 20, 1996).

[7] Philadep Direct Registration System (''DRS'') Procedures, attached as Exhibit A.

[8] 15 U.S.C. 78q–1(a)(1) (1988).

(ii) as to which Philadep consents, the Commission will:

A. By order approve such proposed rule change or

B. Institute procedures to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements respecting the proposed rule change that are filed with the Commission, and all written communications concerning the proposed rule change between the Commission and any person, other than those that may be withheld from the public pursuant to the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to file number SR–Philadep–96–16 and should be submitted by November 20, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27811 Filed 10–29–96; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request For Public Comment With Respect To The Annual National Trade Estimate Report on Foreign Trade Barriers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to section 303 of the Trade and Tariff Act of 1984, as amended, USTR is required to publish annually the National Trade Estimate Report on Foreign Trade Barriers (NTE). With this notice, the Trade Policy Staff Committee (TPSC) is requesting interested parties to assist it in identifying significant barriers to U.S. exports of goods, services and overseas direct investment for inclusion in the NTE. Particularly important are impediments materially affecting the actual and potential financial performance of an industry sector. The TPSC invites written comments that provide views relevant to the issues to be examined in preparing the NTE.

DATES: Public comments are due not later than November 29, 1996.

ADDRESSES: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW., Room 501, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–3475.

SUPPLEMENTARY INFORMATION: The information submitted should relate to one or more of the following nine categories of foreign trade barriers:

(1) Import policies (e.g., tariffs, and other import charges, quantitative restrictions, import licensing, and customs barriers);

(2) Standards, testing, labeling, and certification (including unnecessarily restrictive application of phytosanitary standards, refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards, and environmental restrictions);

(3) Government procurement (e.g., ''buy national'' policies and closed bidding);

(4) Export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

(5) Lack of intellectual property protection (e.g., inadequate patent, copyright, and trademark regimes);

(6) Service barriers (e.g., limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of data processing, quotas on imports of foreign films, and barriers to the provision of services by professionals (e.g., lawyers, doctors, accountants, engineers, nurses, etc.));

(7) Investment barriers (e.g., limitations on foreign equity participation and on access to foreign government-funded R&D consortia, local content, technology transfer and export performance requirements, and restrictions on repatriation of earnings, capital, fees and royalties);

(8) Anticompetitive practices with trade effects tolerated by foreign governments (including anticompetitive activities of both state-owned and private firms that apply to services or to goods and that restrict the sale of U.S. products to any firm, not just to foreign firms that perpetuate the practices; and

(9) Other barriers (*i.e.*, barriers that encompass more than one category, e.g., bribery and corruption, or that affect a single sector).

As in the case of last year's NTE, we are asking that particular emphasis be placed on any practices that may violate U.S. trade agreements. We are also interested in receiving any new or updated information pertinent to the barriers covered in last year's report as well as new information. Please note that the information not used in the NTE will be maintained for use in future negotiations.

It is most important that your submission contain estimates of the potential increase in exports that would result from the removal of the barrier, as well as a clear discussion of the method(s) by which the estimates were computed. Estimates should fall within the following value ranges: less than $5 million; $5 to $25 million; $25 million to $50 million; $50 million to $100 million; $100 million to $500 million; or over $500 million. Such assessments enhance USTR's ability to conduct meaningful comparative analyses of a barrier's effect over a range of industries.

Please note that interested parties discussing barriers in more than one country should provide a separate submission (i.e., one that is self-contained) for each country.

Written Comments

All written comments should be addressed to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street N.W., Room 501, Washington, D.C. 20508.

All submissions must be in English and should conform to the information requirements of 15 CFR Part 2003.

A party must provide ten copies of its submission which must be received at USTR no later than November 30, 1996. If the submission contains business confidential information, ten copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''confidential'' at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection shortly after the filing deadline. Inspection is by appointment only with the staff of the USTR Public Reading Room and can be arranged by calling (202) 395–6186.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 96–27840 Filed 10–29–96; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–101]

Denial of Benefits Under a Trade Agreement by the European Union: Termination of Section 302 Investigation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination and monitoring.

SUMMARY: Having reached an agreement that provided a satisfactory resolution of the issues under investigation, the Acting United States Trade Representative (USTR) has decided to terminate an investigation initiated under section 302(b) of the Trade Act of 1974 (Trade Act) with respect to denial of benefits under a trade agreement by the European Union (EU) and to monitor EU implementation pursuant to section 306 of the Trade Act.

DATES: This investigation was terminated effective October 21, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Mowrey, Director, European Regional Affairs, (202) 395–4620, or Amelia Porges, Senior Counsel for Dispute Settlement, (202) 395–7305, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

SUPPLEMENTARY INFORMATION: When Austria, Finland and Sweden acceded to the EU in January 1995, the EU withdrew the entire WTO tariff schedules of these three countries and of the EU of twelve members and applied the common external tariff of the EU of twelve to imports into these three countries. The result was to increase the tariffs applicable on a number of U.S. exports to Austria, Finland and Sweden, impairing prior tariff concessions by these three countries. The EU then began negotiations pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) on compensation to its trading partners for the impairment of concessions; Articles XXIV:6 and XXVIII entitle relevant affected WTO Members in such a situation to receive negotiated compensation or, in the absence of agreement on compensation, to modify or withdraw ''substantially equivalent concessions.''

In order to exercise U.S. rights under a trade agreement, the USTR on October 24, 1995, initiated an investigation pursuant to section 302(b)(1) of the Trade Act (19 U.S.C. 2412(b)) with respect to the EU's policies and practices in this matter. (See 60 FR 55076 of October 27, 1995). At that time, the USTR proposed that, unless the United States and EU negotiated a mutually acceptable solution that compensated the United States in accordance with its rights under the WTO, the USTR would determine pursuant to section 304 of the Trade Act that the EU's policies and practices denied the United States trade agreement benefits and were actionable under section 301(a) and that the appropriate action in response would be to suspend, by the end of 1995, concessions on selected products. However, on November 29, 1995, the EU and the United States concluded negotiations and reached agreement on the permanent compensation which would be accorded to the United States in this connection.

As a result of the Agreement for the Conclusion of Negotiations Between the United States and the European Community Under Article XXIV:6 of the GATT 1994 (the Agreement), the USTR decided that no action was necessary under Section 301 and the United States did not give written notice of its intention to modify or suspend substantially equivalent concessions. On December 4, 1995, the European Council formally approved the Agreement, and on July 22, 1996, representatives of both sides formally signed the Agreement with effect from December 30, 1995. The Agreement provides full and permanent compensation for increased tariffs imposed on U.S. imports into Austria, Finland, and Sweden. Having reached an agreement that provides a satisfactory resolution of the issues under investigation, the Acting USTR terminated the investigation on November 24, 1996, and will monitor EU implementation pursuant to section 306 of the Trade Act (19 U.S.C. 2416).

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 96–27759 Filed 10–29–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 17, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–470.

Date filed: February 16, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 16, 1995.

Description: Application of DHL Airways, Inc., pursuant to 49 U.S.C., Section 41102 and Subpart Q of the Regulations, requests an Amendment No. 1 to its certificate of public convenience and necessity authorizing it to provide foreign air transportation of property and mail between the coterminal points Cincinnati, Ohio, and Houston, Texas and the terminal points Mexico City, Monterrey, and Guadalajara, Mexico, and that the Department grant such additional or other authority, consistent with this application (including a request to the Mexican Government to concur in a designation of DHL as the second U.S. all-cargo carrier between Houston and Monterrey and Guadalajara). Motion of DHL Airways, Inc. for leave to file Amendment No. 1 to Application.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–27781 Filed 10–29–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Approval of Noise Compatibility Program, Snohomish County Airport/ Paine Field, Snohomish County, Washington

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Airport Manager of the Snohomish County Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980). On April 5, 1996, the FAA determined that the noise exposure maps submitted by the airport manager under Part 150 were in compliance with applicable requirements. On October 2, 1996, the Associate Administrator for Airports approved the Snohomish County Airport noise compatibility program. All of the program elements were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Snohomish County Airport noise compatibility program is October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop; Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM–611; 1601 Lind Avenue, S.W., Renton, Washington, 98055–4056. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Snohomish County Airport, effective October 2, 1996. Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such a program to be developed in consultation with interested and affected parties including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Seattle, Washington.

Snohomish County Airport submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted at Snohomish County Airport. The Snohomish County Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 5, 1996. Notice of this determination was published in the Federal Register on April 15, 1996.

The Snohomish County Airport noise compatibility program contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2000. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on April 5, 1996, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 7 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective October 2, 1996. Outright approval was granted for all program elements.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on October 2, 1996. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Snohomish County Airport.

Issued in Renton, Washington on October 17, 1996.

Lowell H. Johnson,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 96–27877 Filed 10–29–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 185, Aeronautical Spectrum Planning Issues

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 185 meeting to be held on November 15, 1996, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Administrative Remarks; (2) General Introductions; (3) Review and Approval of the Agenda; (4) Review and Approval of the Summary of the Previous Meeting; (5) Final Review of the Twelfth Draft Special Committee 185 Report; (6)

Approve Draft Report for Ballot; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 24, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–27880 Filed 10–29–96; 8:45 am]

BILLING CODE 4810–13–M

Notice of Intent To Rule on Application (#96–02–U–00–ENV) To Use the Revenue From a Passenger Facility Charge (PFC) at Wendover Airport, Submitted by the City of Wendover, Wendover, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposed to rule and invites public comment on the application to use PFC revenue at Wendover Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before November 29, 1996.

ADDRESS: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration, 26805 East 68th Avenue, Suite 224, Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Chris Melville, at the following address: City of Wendover, 345 Airport Apron, P.O. Box 326, Wendover, UT 84083.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Wendover Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration, 26805 East 68th Avenue, Suite 224, Denver CO 80249–6361. The application may be received in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–02–U–00–ENV) to use PFC revenue at Wendover Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 21, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the City of Wendover, Wendover, Utah, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 17, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Actual charge effective date: August 1, 1996

Proposed charge expiration date: January 1, 2019

Total requested for use approval: $5,555,100.10

Brief description of proposed project: Environmental assessment for new runway 8/26, Update airport layout plan (ALP); Bond preparation work; Construct new runway 8/26.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Wendover Airport.

Issued in Renton, Washington on October 21, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–27875 Filed 10–29–96; 8:45 am]

BILLING CODE 4910–13–M

Cancellation of Technical Standard Orders; Comment Requests

AGENCY: Federal Aviation Administration.

ACTION: Cancellation of Technical Standard Orders (TSOs) C37, C37a, C37b, C38, C38a, C38b; request for comments.

SUMMARY: This is a cancellation of TSOs–C37, Very High Frequency Communications Transmitting Equipment Operating within 118–132 Megacycles, C37a, Very High Frequency Communications Transmitting Equipment Operating within 118–132 Megacycles, C37b, Very High Frequency Communications Transmitting Equipment Operating within 118–136 Megacycles, C38, Very High Frequency Communications Receiving Equipment Operating within 118–132 Megacycles, C38a, Very High Frequency Communications Receiving Equipment Operating within 118–132 Megacycles, and C38b, Very High Frequency Communications Receiving Equipment Operating within 118–136 Megacycles. Cancellation of these TSOs are necessary to comply with a Federal Communications Commission (FCC) Notice, DA 95–2441, ''Aircraft Radios to be replaced by January 1, 1997'', dated 12/11/95. The FCC ordered that all aircraft operating within the United States airspace using VHF radios with 50 kilohertz or greater channel spacing and a frequency tolerance greater than 30 part per million will no longer be authorized for use in FCC licensed aircraft stations. FCC licensed aircraft stations operating within United States airspace radios must be converted to 25 kilohertz channel spacing and have a frequency tolerance of 30 parts per million or less by January 1, 1997.

EFFECTIVE DATES: January 1, 1997. Comments for inclusion in the TSO's Docket Files must be received on or before November 29, 1996.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), Technical Programs and Continued Airworthiness Branch (AIR–120), Attention: File No. TSO–C37, C37a, C37b, C38, C38a, and C38b, 800 Independence Avenue, S.W., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Program and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546, and FAX Number 202–267–5340.

SUPPLEMENTARY INFORMATION:

Background

This is a notice cancels of the following TSOs: TSO–C37, Very High Frequency (VHF) Radio Communication Transmitting Equipment Operating Within the Radio Frequency Range of 118–132 Megacycles (For Air Carrier Aircraft), dated 11/1/55, TSO C37a, Very High Frequency (VHF) Radio Communication Transmitting Equipment Operating Within the Radio Frequency Range of 118–132 Megacycles (For Air Carrier Aircraft), dated 9/1/59, TSO C37b, Very High Frequency (VHF) Radio Communication Transmitting Equipment Operating Within the Radio Frequency Range of 118–136 Megacycles, dated 10/22/62, TSO C38, Very High Frequency (VHF) Radio Communication Receiving Equipment Operating Within the Radio Frequency Range of 118–132 Megacycles (For Air Carrier Aircraft), dated 11/1/55, TSO C38a, Very High Frequency (VHF) Radio Communication Receiving Equipment Operating Within the Radio Frequency Range of 118–132 Megacycles (For Air Carrier Aircraft), dated 9/1/59, and TSO C38b, Very High Frequency (VHF) Radio Communication Receiving Equipment Operating Within the Radio Frequency Range of 118–136 Megacycles, dated 10/22/62. This cancellation will insure that future FCC licensed aircraft stations are compliant with FCC Notice DA–95–2441. This action is necessary to increase the number of Air Traffic Control channels available, reduce delays in FAA controlled airspace and to take advantage of newly available aviation frequencies in the 136–137 Megacycles band. The FCC Notice calls out an FCC order whose implementation has been delayed for 13 years. The commission indicated that aircraft stations operating on 50 kilohertz or greater channel spacing and a frequency tolerance greater than 30 parts per million were no longer authorized for use in the 118–137 band. The commission noted that the Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association, the General Aviation Manufacturers Association, and the Helicopter Association International wanted the FCC to indefinitely grandfather the use of radios with 50 kilohertz channel spacing and frequency tolerances greater than 30 parts per million. The commission indicated in its notice that adequate time has been granted for all aircraft owners to comply with the order and that no further extensions would be granted. Based on the FCC notice and referenced order, the FAA must cancel the above mentioned TSOs.

The Cancellation Procedure

The FAA anticipates that this cancellation will not result in adverse or negative comments, and therefore is issuing it without prior opportunity to comments. TSOs C37c, C37d, C38c, and C38d remain in effect and the majority of the manufacturers are producing units under these standards. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will published a document in the Federal Register indicating that no adverse or negative comments were received and confirming that date on which the cancellation become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit a comment, a document withdrawing the cancellation will be published in the Federal Register.

Comments Invited

Although this action is in the form of a final cancellation and not preceded by a notice, comments are invited. Interested persons are invited to comment this cancellation by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO Docket File number and be submitted to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional action would be needed.

Issued in Washington, DC., on October 24, 1996.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 96–27876 Filed 10–29–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board

[STB Finance Docket No. 33181]

The Kansas City Southern Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company

Illinois Central Railroad Company (IC) has agreed to grant overhead trackage rights to The Kansas City Southern Railway Company (KCS) on 500 feet of its track near IC milepost 921, at the Lambert Junction Interlocking, New Orleans, LA.

The transaction was scheduled to be consummated on October 21, 1996.

The trackage rights will facilitate economical and efficient operation of KCS's overhead traffic through New Orleans and make more efficient use of IC's and KCS's adjacent trackage.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33181, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Myles L. Tobin, Esq., Illinois Central Railroad Company, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5504.

Decided: October 22, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–27803 Filed 10–29–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33182]

New Orleans Public Belt Railroad—Trackage Rights Exemption—Illinois Central Railroad Company

Illinois Central Railroad Company has agreed to grant overhead trackage rights to New Orleans Public Belt Railroad

(NOPB) [1] over its trackage between milepost 449.9, at East Bridge Junction Interlocking, Shrewsbury, LA, and milepost 921.14, at Lambert Junction Interlocking, New Orleans, LA, a total distance of approximately 2.6 miles.

The transaction was scheduled to be consummated on October 21, 1996.

The trackage rights will facilitate economical and efficient operation of NOPB's overhead traffic through Shrewsbury and New Orleans.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33182, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Myles L. Tobin, Esq., Illinois Central Railroad Company, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5504.

Decided: October 22, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–27804 Filed 10–29–96; 8:45 am]

BILLING CODE 4915–00–P

[1] NOPB is a local autonomous agency of the City of New Orleans. It is an independent railroad and is not part of any railroad system.

[STB Finance Docket No. 33139]

Wisconsin & Southern Railroad Co.—Lease and Operation Exemption—Union Pacific Railroad Company

Wisconsin & Southern Railroad Co., a Class III short line rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by lease and operate three interconnecting lines that total approximately 73.62 miles of rail lines owned by Union Pacific Railroad Company and located in the State of Wisconsin as follows: (1) The Reedsburg Line between milepost 134.0 at Madison and milepost 191.9 at Reedsburg; (2) the Cottage Grove Industrial Lead between milepost 81.0 (a point diverging from the Reedsburg Line at about milepost 139.3 in Madison) and milepost 71.0 at Cottage Grove; and (3) the Central Soya Industrial Lead between milepost 83.78 (a point diverging from the Reedsburg Line at about milepost 136.7 in Madison) and milepost 89.50 in Madison. The proposed transaction was to be consummated on or about October 20, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33139, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Robert A. Wimbish, Rea, Cross & Auchincloss, Suite 420, 1920 N Street, N.W., Washington, DC 20036.

Decided: October 22, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–27805 Filed 10–29–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to Section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6–8000) also prescribes use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 5 percent for calendar year 1997.

DATES: The rate will be in effect for the period beginning on January 1, 1997 and ending on December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Program Compliance & Evaluation Division, Financial Management Service, Department of the Treasury, 401 14th Street, S.W., Washington, D.C. 20227 (Telephone: (202) 874–6630).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Pub. L. 95–147, 91 Stat. 1227. Computed each year by averaging investment rates for the 12-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on the moving basis, changes by 2 per centum. The rate in effect for calendar year 1997 reflects the average investment rates for the 12-month period ended September 30, 1996.

Dated: October 17, 1996.

Larry D. Stout,

Assistant Commissioner, Federal Finance.

[FR Doc. 96–27826 Filed 10–29–96; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

Proposed Collection; Comment Request for Form 8023–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8023–A, Corporate Qualified Stock Purchases.

DATES: Written comments should be received on or before December 30, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Corporate Qualified Stock Purchases.

OMB Number: 1545–1428.

Form Number: 8023–A.

Abstract: Form 8023–A is used by a corporation that acquires the stock of another corporation to elect to treat the purchase of stock as a purchase of the other corporation's assets. This election allows the acquiring corporation to depreciate these assets and claim a deduction on its income tax return. IRS uses Form 8023–A to determine if the election is properly made and as a check against the acquiring corporation's deduction for depreciation. The form is also used to determine if the selling corporation reports the amount of the sale in its income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 201.

Estimated Time Per Respondent: 12 hr., 34 min.

Estimated Total Annual Burden Hours: 2,525.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 17, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–27864 Filed 10–29–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8693

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8693, Low-Income Housing Credit Disposition Bond.

DATES: Written comments should be received on or before December 30, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Disposition Bond.

OMB Number: 1545–1029.

Form Number: 8693.

Abstract: Section 42(j)(6) of the Internal Revenue Code states that when a taxpayer disposes of a building (or an interest therein) on which the low-income housing credit has been claimed, the taxpayer may post a bond in lieu of paying the recapture tax if the building continues to be operated as a qualified low-income building for the remainder of the compliance period. Form 8693 is used to post a bond under Code section 42(j)(6) to avoid recapture of the low-income housing credit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hr., 6 min.

Estimated Total Annual Burden Hours: 1,100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 17, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–27865 Filed 10–29–96; 8:45 am]

BILLING CODE 4830–01–U

federal register

Wednesday
October 30, 1996

Part II

Department of Housing and Urban Development

NOFA for Rental Assistance for Persons With Disabilities in Support of Designated Housing Allocation Plans; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4085–N–01]

NOFA for Rental Assistance for Persons With Disabilities, in Support of Designated Housing Allocation Plans

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This notice announces the availability of up to $78.6 million ($20.3 million in two-year budget authority and $58.3 million in five-year budget authority) for Section 8 rental certificates and vouchers for persons with disabilities in support of designated housing allocation plans. This funding will support approximately 4,300 rental vouchers and certificates. Public housing agencies (HAs) are invited to respond to this NOFA. This NOFA is not applicable to Indian Housing Authorities (IHAs), as the requirements of Section 7 (42 U.S.C. 1437e) pertinent to designated housing allocation plans are not applicable to IHAs.

The purpose is to provide rental vouchers and certificates to enable persons with disabilities to rent affordable private housing.

DATES: There is no application deadline for this NOFA.

Applications may be submitted by HAs to the local HUD Office immediately following the publication of this NOFA, or at any subsequent time. The $78.6 million in funding available under this NOFA will be used to approve HA applications on a first-come, first-served basis until all the funding has been obligated. Any additional funding made available for this purpose will also be used to approve HA applications in accordance with this NOFA. Consequently, this NOFA has no closing date and applications will continue to be accepted by the local HUD Offices until further notice. HUD will not accept application materials sent via facsimile (FAX) transmission.

ADDRESSES: HUD Headquarters, Office of Public and Assisted Housing Operations, Room 4206, 451 Seventh Street, S.W., Washington, D.C., 20410; and the local HUD State or Area Office, Attention: Director, Office of Public Housing, are the official places of receipt for all applications. An HA's application (see paragraph C., Application Submission Requirements, regarding the multiple components that must comprise an HA's application) should be submitted concurrently to both offices. For ease of reference, the term ''HUD Office'' will be used throughout this NOFA to mean the HUD State Office, and HUD Area Office.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone number (202) 708–0477 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The Section 8 information collection requirements contained in this NOFA have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Family Self-Sufficiency (FSS) Program Requirement

Unless specifically exempted by HUD, all rental voucher or rental certificate funding reserved with FY 1996 funds (except funding for renewals or amendments) will be used to establish or contribute to the minimum size of an HA's FSS program.

A. Purpose and Substantive Description

(1) Authority. Legislative authority to provide Section 8 assistance in support of allocation plans to designate public housing for occupancy by elderly families only, persons with disabilities only, and/or elderly families and disabled families only (covering $20.3 million of the total of $78.6 million available through this NOFA) is found at Section 7 of the U.S. Housing Act of 1937 (42 U.S.C. 1437e). The Omnibus Consolidated Rescissions and Appropriations Act, Pub.L 104–134, approved April 26, 1996 (Appropriations Act), contains language authorizing the use of Section 8 rental certificate and voucher funding for housing agencies to implement allocation plans approved by the Secretary for designated housing. Legislative authority (applicable to $58.3 million of the total of $78.6 million available under this NOFA) for rental assistance for persons with disabilities is found in the Appropriations Act which states that the Secretary may designate up to 25 percent of the amounts earmarked for Section 811 of the National Affordable Housing Act of 1990 (42 U.S.C. 8013) for tenant-based assistance, as authorized under that section.

(2) Application Funding. HUD will award funding for rental vouchers or certificates to HAs that submit an allocation plan to designate public housing for occupancy by elderly families only, disabled families only, and/or disabled and elderly families only, and that also administer a Section 8 rental certificate or rental voucher program.

HUD will make available approximately 4,300 rental vouchers and certificates (2,000 rental vouchers and certificates representing $20.3 million in two-year budget authority, and 2,300 rental vouchers and certificates representing $58.3 million in five-year budget authority) to support approvable HA allocation plans. The $58.3 million of five-year budget authority will be obligated first, before the $20.3 million of two-year budget authority is obligated. The rental vouchers and certificates will assist HAs in providing sufficient alternative resources to meet the housing needs of those persons with disabilities who would have been housed by the HA if occupancy in the designated public housing project were not restricted to elderly households and assist HAs that wish to continue to designate their buildings as ''mixed elderly and disabled buildings'' but can demonstrate a need for alternative resources for persons with disabilities that is consistent with the jurisdiction's Consolidated Plan and the low-income housing needs of the jurisdiction. Applicants who choose to apply should review the Housing Program Opportunity Extension Act of 1996, Pub.L 104–120, approved March 28, 1996 (Extender Act), which significantly changed the requirements for public housing allocation plans. HUD has not yet issued regulations implementing the Extender Act; however, an explanatory HUD publication, Notice PIH 96–60 (HA), was issued on August 5, 1996. The Notice states that HAs are not normally required to submit allocation plans if they wish to keep all their ''elderly'' housing as ''mixed population'' housing; however, HAs that wish to obtain certificates under this NOFA must by law submit an allocation plan in accordance with this NOFA.

HUD intends to fund all approvable applications for designated housing allocation plans on a first-come, first-served basis.

(3) Limit on Rental Assistance Requested. An HA submitting a designated housing allocation plan may apply for only the number of units needed to meet the requirements of the allocation plan to provide housing resources for persons who otherwise would have received public housing.

(4) Guidelines.

(a) Definitions.

Allocation plan. A HUD-approved allocation plan required of HAs seeking to designate a project for occupancy by elderly families only, disabled families only, and/or elderly and disabled families only. See 42 U.S.C. 1437e, as amended by the Extender Act. (The requirements of 42 U.S.C. 1437e are not applicable to IHAs.)

Disabled Family. A family whose head, spouse or sole member is a person with disabilities. The term ''disabled family'' may include two or more persons with disabilities living together, and one or more persons with disabilities living with one or more persons who are determined to be essential to the care or well-being of the person or persons with disabilities. A disabled family may include persons with disabilities who are elderly.

Person with disabilities. A person who—

(a) Has a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or

(b) Is determined to have a physical, mental or emotional impairment that:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or

(c) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)).

The term ''person with disabilities'' does not exclude persons who have the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome (HIV).

(b) Eligible HAs. HAs that submit an allocation plan to designate public housing for occupancy by elderly families only, disabled families only, and/or elderly and disabled families only, receive HUD approval of that allocation plan, and that also administer a Section 8 Rental Certificate or Rental Voucher Program.

Some housing agencies currently administering the Section 8 Rental Voucher and Certificate Programs have, at the time of publication of this NOFA, major program management findings that are open and unresolved or other significant program compliance problems (e.g., HA has not implemented mandatory FSS Program). HUD will not accept applications for additional funding from these HAs as contract administrators if, on the application deadline date, the findings are not closed to HUD's satisfaction. If these HAs want to apply under this NOFA, the HA must submit an application that designates another housing agency, non-profit agency, or contractor that is acceptable to HUD and includes an agreement with the other housing agency or contractor to administer the new funding increment on behalf of the HA. The Office of Public Housing in the local HUD Office will notify, immediately after the publication of this NOFA, those HAs that are not eligible to apply. Applications submitted by these HAs without an agreement from another housing agency or contractor, approved by HUD, to serve as contract administrator will be rejected.

(c) Eligible Participants.

Only persons with disabilities and disabled families who live in public housing that has been designated for occupancy by the elderly, or disabled families who are on the HA's public housing waiting list, may receive a rental voucher or certificate awarded in conjunction with designated housing allocation plans. Non-elderly persons with disabilities and disabled families who live in public housing designated for the elderly in accordance with an allocation plan submitted in response to this NOFA, or are on the HA's public housing waiting list, need not be listed on the Section 8 waiting list in order to be offered and receive Section 8 rental assistance. These families may be admitted to the Section 8 program as a special admission (24 CFR 982.203).

(d) Rental Voucher and Certificate Assistance.

(i) Section 8 regulations. HAs must administer the Section 8 assistance in accordance with HUD regulations governing the Section 8 rental voucher and certificate programs.

(ii) Section 8 admissions requirements. Section 8 assistance must be provided to eligible applicants in conformity with applicable rules governing the Section 8 program, and in accordance with the terms of the HA's designated housing allocation plan and administrative plan.

(iii) Turnover. When a rental voucher or rental certificate under this program becomes available for reissue (e.g., the individual or family initially selected for the program drops out of the program or is unsuccessful in the search for a unit), the rental assistance may be used only for another individual or family eligible for assistance under this program for five years subject to appropriations for renewal funding (for two-year budget authority), and the five-year term of the ACC for rental assistance for five-year budget authority.

(e) HA Responsibilities. In addition to normal HA responsibilities under the Section 8 programs and under HUD regulations for nondiscrimination based on handicap (24 CFR 8.28), HAs that receive rental voucher or certificate funding must:

(i) Assist program participants to gain access to supportive services available within the community, and to identify public or private funding sources for accessibility features, when participants request such assistance, but not require eligible applicants or participants to accept supportive services as a condition of participation or continued occupancy in the program;

(ii) Not deny persons who qualify for rental assistance under this program other housing opportunities for which they are eligible; and

(iii) Not deny other housing opportunities, or otherwise restrict access to HA programs, to eligible applicants who choose not to participate.

B. Allocation Amounts

This NOFA announces the availability of up to $78.6 million (approximately) of budget authority that will support about 4,300 rental vouchers or certificates. HAs are provided with the opportunity to apply for rental vouchers and certificates in conjunction with submission of an allocation plan to designate public housing for elderly families only, disabled families only, and/or elderly and disabled families only.

C. Application Submission Requirements

(1) Form HUD–52515. All HAs must complete form HUD–52515, Funding Application, for the Section 8 rental certificate and rental voucher programs (dated January 1996). This form was recently revised to include all necessary certifications for Fair Housing, Drug Free Workplace and Lobbying Activities; therefore, HAs can complete and sign the new form HUD–52515 to meet the requirements of these certifications. An application must

include the information in Section C, Average Monthly Adjusted Income, of form HUD–52515 in order for HUD to calculate the amount of Section 8 budget authority necessary to fund the requested number of units. Copies of form HUD–52515 may be obtained from the local HUD Office.

(2) Local Government Comments. Section 213 of the Housing and Community Development Act of 1974 requires that HUD independently determine that there is a need for the housing assistance requested in applications and solicit and consider comments relevant to this determination from the chief executive officer of the unit of general local government. The HUD Office will obtain Section 213 comments from the unit of general local government in accordance with 24 CFR part 791, subpart C, Applications for Housing Assistance in Areas Without Housing Assistance Plans. Comments submitted by the unit of general local government must be considered before an application can be approved.

For purposes of expediting the application process, the HA should encourage the chief executive officer of the unit of general local government to submit a letter with the HA application commenting on the HA application in accordance with Section 213. Because HUD cannot approve an application until the 30-day comment period is closed, the Section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the unit of general local government.

(3) Letter of Intent and Narrative. All the items in this Section must be included in the application submitted to the HUD Office. The HA must state in its cover letter to the application whether it will accept a reduction in the number of rental certificates or rental vouchers and the minimum number of rental certificates or rental vouchers it will accept, since the funding is limited and HUD may only have enough funds to approve a smaller amount than the number of rental certificates or rental vouchers requested.

(4) Approvable Designated Housing Allocation Plan. The application must include an approvable allocation plan to designate housing [for the elderly] in accordance with 42 U.S.C. 1437e, as amended by the Extender Act.

D. Corrections to Deficient Applications

(1) Acceptable Applications. The HUD Office will initially screen all applications and notify HAs of deficiencies (exclusive of the allocation plan which will be reviewed by HUD Headquarters) by letter within 7 calendar days.

If an application has deficiencies, the HA will have 14 calendar days from the date of the issuance of the HUD notification letter to submit the missing or corrected information to the HUD Office before the application can be considered for further processing by HUD.

All HAs must submit corrections within 14 calendar days from the date of the HUD Office letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time (i.e., the time in the appropriate HUD Office), of the 14th calendar day of the correction period will not be accepted and the application will be rejected as incomplete.

(2) Unacceptable Applications. (a) After the 14-calendar day deficiency correction period, the HUD Office will immediately notify any HA that submitted an application (exclusive of the allocation plan portion of the application) that the HUD Office determines is not acceptable for processing. The HUD Office must also concurrently notify HUD Headquarters, Attention: Gerald J. Benoit, Director, Operations Division, Room 4220, 451 Seventh Street, S.W., Washington, D.C., 20410, of this decision so that Headquarters will be able to take this into consideration as part of its processing of the HA's allocation plan. The HUD Office notification of rejection letter to the HA and HUD Headquarters must state the basis for the decision.

(b) Applications for Section 8 rental assistance (exclusive of the allocation plan) that fall into any of the following categories will not be processed:

(i) There is a pending civil rights suit against the HA instituted by the Department of Justice or there is a pending administrative action for civil rights violations instituted by HUD (including a charge of discrimination under the Fair Housing Act).

(ii) There has been an adjudication of a civil rights violation in a civil action brought against the HA by a private individual, unless the HA is operating in compliance with a court order or implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the areas of noncompliance.

(iii) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance.

(iv) HUD has denied application processing under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(v) The HA has serious unaddressed, outstanding Inspector General audit findings, Fair Housing and Equal Opportunity monitoring review findings, or HUD management review findings for its rental voucher or rental certificate programs. The only exception to this category is if the HA has been identified under the policy established in section A.(4)(b) of this NOFA and the HA makes application with a designated contract administrator.

(vi) The HA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the HA to administer an additional increment of rental vouchers or rental certificates.

(vii) An HA application (exclusive of the allocation plan) that does not comply with the requirements of 24 CFR 982.102 and this NOFA, after the expiration of the 14-calendar day technical deficiency correction period will be rejected from processing.

(viii) The application is from an HA that has failed to achieve a lease-up rate of 90 percent of units in its HUD-approved budget for the HA fiscal year prior to application for funding in each of its rental voucher and certificate programs.

E. Application Selection Process

(1) HUD Office Review. Upon receipt, the Office of Public Housing in the HUD Office will screen HA applications (exclusive of the allocation plan) and stop processing any applications found unacceptable for further processing, as per paragraph D.(2) above.

If the HUD Office determines that the application (exclusive of the allocation plan) is approvable, it will notify HUD Headquarters that it is recommending that the application be funded (contingent upon Headquarters' approval of the allocation plan). Headquarters [at the address specified in paragraph D.(2)] shall be notified by the HUD Office within 30 days of the date of its receipt of the HA's application in response to this NOFA.

If HUD Headquarters disapproves an allocation plan submitted in response to this NOFA, the HA's Section 8 application will be rejected and the HA will not be eligible for the rental vouchers and certificates available under this NOFA.

(2) Funding. Headquarters will fund, on a first-come, first-served basis, all applications for which the allocation plans are determined approvable by HUD Headquarters and for which the Section 8 application is recommended for approval by the HUD Office. The ''first-come'' status of each HA's application shall be based on the date and time the concurrently submitted application (see paragraph entitled **ADDRESSES** at the beginning of this NOFA) is received in HUD Headquarters where the designated housing allocation plan portion of the application will be reviewed. As HAs are selected, the cost of funding the applications will be subtracted from the funds available. Five-year budget authority will be obligated first until all such funds have been obligated, and then two-year budget authority will be obligated until all those funds have been obligated.

(3) Program Type. If an HA application specifically requests funding for either rental vouchers or rental certificates, and funding for the specified program is not available, HUD will award the available form of assistance, notwithstanding the program type specified in the HA application.

F. Other Matters

Catalog of Federal Domestic Assistance. The Federal Domestic Assistance numbers for this program are: 14.855 and 14.857.

Environmental Impact. A Finding of No Significant Impact with respect to the environment was made for the FY 1995 NOFA for this program in accordance with the Department's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding remains applicable to this NOFA and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW, Washington, D.C. 20410.

Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of the Department, the States, and local governments, including HAs.

Impact on the Family. The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Executive Order and, thus, is not subject to review under the Order. This is a funding notice and does not alter program requirements concerning family eligibility.

Accountability in the Provision of HUD Assistance. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its Federal Register notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

Section 103 HUD Reform Act. Section 103 of the Department of Housing and Urban Development Reform Act of 1989, and HUD's implementing regulation codified at subpart B of 24 CFR part 4, applies to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Prohibition Against Lobbying Activities. The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the ''Byrd Amendment'') and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd

Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Dated: October 22, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–27839 Filed 10–29–96; 8:45 am]

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federal register

Wednesday
October 30, 1996

Part III

Department of Justice

Bureau of Prisons

28 CFR Parts 543 and 553

Inmate Legal Activities and Inmate Personal Property; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 543 and 553

[BOP 1063–P]

RIN 1120–AA58

Inmate Legal Activities and Inmate Personal Property

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (''Bureau'') is proposing to amend its regulations in order to set forth situations in which one inmate may be allowed to possess the legal materials of another inmate while assisting that other inmate. This amendment is intended to maintain an appropriate balance between the need for institution security, good order, and discipline and the ability of inmates to assist each other with their legal documents.

DATES: Comments due by December 30, 1996.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on inmate legal activities (28 CFR 543, subpart B) and on inmate personal property (28 CFR 553, subpart B). A final rule on inmate legal activities was published in the Federal Register on June 29, 1979 (44 FR 38263) and was amended on December 4, 1981 (46 FR 59509) and on July 23, 1990 (55 FR 29992); a final rule on inmate personal property was published in the Federal Register on April 29, 1983 (48 FR 19573).

Existing Bureau regulations allow an inmate at an institution without an active, ongoing legal aid program the assistance of another inmate for purposes of legal research and preparation of legal documents (see 28 CFR 543.11(f)). Bureau regulations on inmate personal property specify that an inmate may possess only that property which the inmate is authorized to retain upon admission to the institution, which is issued while the inmate is in custody, which the inmate purchases in the institution commissary, or which is approved by staff to be mailed to, or otherwise received by an inmate (see 28 CFR 553.10). With respect to legal materials, Bureau regulations further specify that an inmate may be allowed to retain those legal materials which are necessary for an inmate's legal actions (see 28 CFR 553.11(d)). The Bureau has always taken this to mean materials which are necessary for an inmate's own legal actions.

To maintain security and good order in the institution, the Bureau believes that an inmate should not possess another inmate's legal materials. Possession of such materials by another inmate may result in extortion attempts, the exchange of contraband, or the dissemination of information which could be used to endanger other inmates, institution staff, or the general public. Practical complications may also arise. For example, when inmates are transferred from one institution to another, their legal materials could be lost or damaged, thereby potentially affecting the inmates' ability to litigate their cases.

On occasion, inmates have been allowed to possess other inmates' legal materials to some degree. To ensure consistency and maintain an appropriate balance between the need for institution security, good order, and discipline and the ability of inmates to assist each other, the Bureau is proposing to liberalize its regulations to allow an inmate to possess another inmate's legal materials within certain limitations.

The proposed regulations specify that except in instances where the Warden imposes limitations for reasons of institution security, good order, or discipline, an inmate may possess another inmate's legal documents while assisting that inmate in the institution's main law library and in other locations if the Warden so designates. The inmate being assisted must bring his or her legal materials to the law library or other location in order to provide access to the assisting inmate. The inmate providing assistance may not remove the legal materials from the library or other designated location. Although the inmate being assisted need not remain present, that inmate is responsible for retrieving his or her legal materials. If, for example, the inmate being assisted chooses to leave the library or other designated location in order to recreate, that inmate must return in order to retrieve the legal materials. Legal materials left unattended in the law library or other designated location may be disposed of by staff as nuisance contraband.

The institution's need for security, good order, or discipline may limit an inmate's assistance to another inmate when an inmate is placed in the institution's special housing unit. An inmate may be placed in a special housing unit for various reasons including administrative detention during the course of an investigation of allegations that the inmate committed a prohibited act, for protection, pending transfer, or in disciplinary segregation following a determination that the inmate had committed a prohibited act. Security necessarily restricts access to such inmates by inmates in the general population. Inmate assistance therefore may only be available from other inmates already in the special housing unit. Legal assistance from attorneys remains available to an inmate in a special housing unit (see § 543.12).

In addition to the foregoing changes, the Bureau is consolidating the provisions pertinent to legal materials in the regulations on inmate legal activities. The regulations on inmate personal property will contain only a cross-reference. Other changes to the regulations on inmate legal activities include a definition of leisure time in § 543.11(a), a revised definition of legal materials in the introductory text of § 543.11(d), a restatement of the provisions for receipt, purchase, and retention of legal materials in § 543.11(d) (1) and (2), and a clarification to the provisions in § 543.11(h) concerning the preparation of legal documents by a public stenographer.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant impact on a substantial number of small entities. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Parts 543 and 553

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), parts 543 and 553 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 543—LEGAL MATTERS

1. The authority citation for 28 CFR part 543 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510, 1346(b), 2671–80; 28 CFR 0.95–0.99, 0.172, 14.1–11.

2. In § 543.11, paragraphs (a), (d), and (f) are revised, and paragraph (h) is amended by revising the last sentence to read as follows:

§ 543.11 Legal research and preparation of legal documents.

(a) The Warden shall make materials in the inmate law library available whenever practical, including evening and weekend hours. The Warden shall allow an inmate a reasonable amount of time, ordinarily during the inmate's leisure time (that is, when the inmate is not participating in a scheduled assignment or program), to do legal research and to prepare legal documents. Where practical, the Warden shall allow preparation of documents in living quarters during an inmate's leisure time.

* * * * *

(d) An inmate's legal materials include but are not limited to the inmate's pleadings and documents (such as a presentence report) that have been filed in court, drafts of pleadings to be submitted to a court (whether prepared by the inmate or by an assisting inmate pursuant to paragraph (f) of this section), documents pertaining to an inmate's administrative case, photocopies of legal reference materials, and legal reference materials which are not available in the institution main law library (or basic law library in a satellite camp).

(1) An inmate may solicit or purchase legal materials from outside the institution. The inmate may receive the legal materials in accordance with the provisions on incoming publications or correspondence (see 28 CFR part 540, subparts B and F) or through an authorized attorney visit from a retained attorney. The legal materials are subject to inspection and may be read or copied unless they are received through an authorized attorney visit from a retained attorney or are properly sent as special mail (for example, mail from a court or from an attorney), in which case they may be inspected for contraband or for the purpose of verifying that the mail qualifies as special mail.

(2) Staff may allow an inmate to possess those legal materials which are necessary for the inmate's own legal actions. Staff may also allow an inmate to possess the legal materials of another inmate subject to the limitations of paragraph (f)(2) of this section. The Warden may limit the amount of legal materials an inmate may accumulate for security or housekeeping reasons.

* * * * *

(f)(1) Except as provided for in paragraph (f)(3) of this section, an inmate may assist another inmate in the same institution during their leisure time (as defined in paragraph (a) of this section) with legal research and the preparation of legal documents for submission to a court or other judicial body.

(2) Except as provided for in paragraph (f)(3) of this section, an inmate may possess another inmate's legal materials while assisting the other inmate in the institution's main law library and in another location if the Warden so designates. The assisting inmate may not remove such legal materials (including any drafts of legal pleadings prepared for the inmate being assisted) from the law library or other designated location. As defined in paragraph (d), drafts of legal pleadings are owned by the inmate being assisted. Although the inmate being assisted need not remain present in the law library or other designated location while the assistance is being rendered, that inmate is responsible for retrieving his or her legal materials from the library or other designated location. Any legal materials left unattended in the law library or other designated location may be disposed of by staff as nuisance contraband.

(3) The Warden at any institution may impose limitations on an inmate's assistance to another inmate in the interest of institution security, good order, or discipline.

* * * * *

(h) * * * Staff shall advise the inmate of any delay in the typing of which they have received notice from the stenographer.

* * * * *

3. The authority citation for 28 CFR part 553 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

4. In § 553.11, paragraph (d) is revised to read as follows:

§ 553.11 Limitations on inmate personal property.

* * * * *

(d) *Legal Materials.* Staff may allow an inmate to possess legal materials in accordance with the provisions on inmate legal activities (see § 543.11 of this chapter).

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[FR Doc. 96–27813 Filed 10–29–96; 8:45 am]

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October 30, 1996

Part IV

Environmental Protection Agency

Cut-Roses; Request for Exception to Worker Protection Standard's Prohibition of Early Entry into Pesticide-Treated Areas to Harvest Roses by Hand Cutting; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–300164I; FRL–5571–8]

Cut-Roses; Request for Exception to Worker Protection Standard's Prohibition of Early Entry into Pesticide-Treated Areas to Harvest Roses by Hand Cutting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of exception request; request for comment.

SUMMARY: EPA's Worker Protection Standard (WPS) set restrictions on agricultural worker entry into pesticide-treated areas. The WPS established procedures for the Agency to grant exceptions to the restriction placed on worker early entry into pesticide-treated areas under 40 CFR 170.112. Roses, Inc. a rose-grower association, has requested an exception to the WPS to allow workers to harvest roses by hand before restricted entry intervals (REIs) have expired. An REI is the amount of time after the end of a pesticide application during which entry to the treated area is restricted. The exception request covers all cut-rose production in greenhouses across the United States and all pesticide products registered for use on roses. A previous exception for this industry, granted on June 10, 1994, expired on June 10, 1996. Roses, Inc. has stated that, without such an exception, the cut-rose industry cannot survive economically. This Notice acknowledges receipt of Roses, Inc.'s request and invites comment on the substance of the request.

DATES: Comments, data, or evidence in response to this Notice must be received on or before November 29, 1996 .

ADDRESSES: The Agency invites any interested person to submit written comments identified by docket number ''OPP-300164I'' to: By mail: Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP-300164''

FOR FURTHER INFORMATION CONTACT: Sara Ager, Certification and Occupational Safety Branch (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone number and e-mail address: (703) 305-7666, e-mail: ager.sara@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Worker Protection Standard

Introduced in 1974, the Worker Protection Standard (WPS) is intended to reduce the risk of pesticide poisonings and injuries among agricultural employees who may be exposed to pesticide residues. Revised in 1992 by 57 FR 38102, the WPS covers agricultural employees working in or on farms, forests, nurseries, and greenhouses performing hand-labor operations in areas treated with pesticides, as well as pesticide handlers who mix, load, apply, or otherwise handle pesticides. The WPS contains requirements for pesticide safety training, notification of pesticide applications, use of personal protective equipment (PPE), restricted entry intervals (REIs) following pesticide application, decontamination supplies, and emergency medical assistance.

B. Early-Entry Exceptions

In general, § 170.112 of the WPS prohibits agricultural workers from entering a pesticide-treated area during a REI. REIs are specified on the pesticide product label and typically range from 4 to 72 hours with some pesticides having longer REIs.

Under specified conditions, the WPS contains the following exceptions to the general prohibition against worker entry into treated areas during the REI:

(1) Entry resulting in no contact with treated surfaces.

(2) Entry for short-term tasks (less than 1 hour) that do not involve hand labor, to be performed by workers wearing required early-entry PPE and meeting other standards.

(3) Entry to perform tasks associated with agricultural emergencies.

Under § 170.112(e) of the WPS, EPA may establish additional exceptions to the provision restricting early entry to perform routine hand-labor tasks. The WPS defines hand labor as any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with treated surfaces (such as plants or soil) that may contain pesticide residues. Section 170.112(e) of the WPS specifies information that must be included in a request for exception, and the process for granting an exception. When a request is received, EPA will issue a public notice and allow at least 30 days for interested parties to comment. EPA will then grant or deny the exception request based on a risk-benefit analysis as required by 40 CFR 170.112(e)(3).

C. Status of 1994 Cut-Rose Exception

On August 21, 1992 (57 FR 38102), EPA proposed to grant an exception to the early-entry prohibition for the cut-flower and cut-fern industries. On June 10, 1994 (59 FR 30265), EPA granted an exception that allowed, under specified conditions, early entry into pesticide-treated areas in greenhouses for a maximum of 3 hours during a 24–hour period to harvest roses by hand cutting. EPA denied a similar exception for cut-flower and cut-fern industries based on insufficient information to warrant an exception.

While rose growers submitted sufficient information to convince EPA that the early-entry restrictions under the WPS could have a substantial economic impact, EPA stated that it expected growers to gradually adapt to the WPS. EPA stated that this exception was granted specifically to provide cut-rose producers time to adjust pesticide spray schedules, invest in engineering controls, and develop technology and other safe alternatives to early entry. EPA believed that early entry under the terms of the exception for a 2–year period would not pose unreasonable adverse effects to rose harvesters. EPA believed that the benefits justified an interim exception during which growers would learn to adapt to the requirements of the WPS. Therefore, EPA limited the exception to 2 years, with an expiration date of June 10, 1996.

EPA noted in its 1994 decision that, if the cut-rose industry determined that the industry needed an exception beyond 2 years, the industry would need to provide additional information on the economic benefits of an exception, as well as the risks, in a new exception request under § 170.112(e)(1). In a letter dated August 1994 to Roses, Inc. the Agency stated that, in order to consider a cut-rose exception in the future, specific information would be needed on worker exposure, poisoning incidents, PPE feasibility, and data on how WPS early-entry restrictions affect the economics of rose production.

In its request to the Agency on May 16, 1996, Roses, Inc. asked EPA to extend the 1994 exception and, prior to major floral holidays, to increase the time a worker would be allowed to perform early-entry activities from 3 hours to 8 hours in a 24–hour period. Since there was insufficient information to support the request to renew the exception and with insufficient time to administratively process the request, the existing exception expired on June 10, 1996. On June 14, 1996, Roses, Inc. requested that the Agency issue an Administrative Order that would give rose growers protection from WPS enforcement related to early-entry harvesting. Lacking both the necessary information and the time to conduct the necessary risk-benefit analysis to make a determination on worker risk, EPA declined to issue such an order. Rose growers were required to fully comply with the WPS when the 1994 cut-rose exception expired.

Through written correspondence, telephone calls, and meetings with Roses, Inc., conversations with industry and academic experts on the production of cut roses, first-hand observations in cut-rose greenhouses and discussions with growers, the Agency obtained sufficient information to support publication of this Notice of Receipt of Roses, Inc.'s request and to provide a 30-day public comment period.

II. Summary of Roses, Inc.'s Exception Request

A. Basis for Requesting a WPS Early-Entry Exception

According to Roses, Inc., without an early-entry exception allowing for harvest of cut roses two times per day, cut-rose growers will lose a significant portion of their crop. Roses, Inc. explains that commercial quality standards demand that roses be cosmetically perfect and at a bloom stage were the bud is just beginning to open. Roses, Inc. notes that, to meet such standards, pesticides must be used to control insects and disease and harvesting must occur at least twice daily to capture flowers at the appropriate bloom stage. Roses, Inc. states that cut roses that are not capable of meeting these standards have no economic value. Roses, Inc. asserts that the required twice daily harvest is not possible on days when pesticides with an REI greater than 4 hours have been applied, since the WPS early-entry restriction eliminates the possibility of a second harvest and may, depending on the REI, eliminate additional harvests for subsequent days.

B. Exception Terms Proposed by Roses, Inc.

Roses, Inc.'s request for an exception asked to continue the terms of the 1994 exception but to increase the early entry exposure period from 3 to 8 hours in a 24–hour period just prior to major floral holidays. Roses, Inc. identified the five major floral holidays as: Christmas (December), Valentine's Day (February), Secretary's Day (April), Mother's Day (May), and Sweetest Day (October). Specifically, Roses, Inc. proposed the following terms:

(1) For all products registered for use on roses, early entry to harvest roses by hand is allowed, under the following conditions:

(a) The time in the treated area during an REI does not exceed 3 hours in any 24–hour period, (except as provided in (b)).

(b) For 2 weeks before major floral holidays, the time in the treated area must not exceed 8 hours in any 24–hour period.

(c) No entry is allowed for the first 4 hours and until inhalation/ventilation criteria on the label has been reached.

(d) The early-entry PPE specified on the product label must be used by workers.

(e) The agricultural employer must properly maintain PPE.

(f) The agricultural employer must take steps to prevent heat stress.

(g) The worker must read the label or be informed of labeling requirements related to safe use.

(h) Application specific information must be provided.

(i) A pesticide safety poster must be displayed.

(j) Decontamination supplies must be provided.

(k) Workers must be WPS trained.

(l) Workers must be notified orally and information posted regarding the exception.

(2) Exception has no expiration or, at minimum, expires in 5 years.

(Note: Terms c through l are currently required by the WPS for all early-entry work activities.)

These proposed terms and conditions are the same as those imposed with the 1994 exception, with the addition of a longer maximum early-entry time period prior to major floral holidays, and an extended effective period. According to Roses, Inc., there are five major floral holidays resulting in peak production periods beyond the normal year-round production. The holidays include: Christmas (December), Valentine's Day (February), Secretary's Day (April), Mother's Day (May), and Sweetest Day (October).

After discussions with the Agency, Roses, Inc. proposed a refinement of the terms of their request. Roses, Inc. proposed, in addition to the terms above, the following:

(1) For products with a 12–hour REI on the label, allow early entry to harvest roses under the following conditions:

(a) The time in the treated area for each worker may not exceed 4 hours in any 12–hour REI period.

(b) Conditions (b) through (l) above.

(2) For products with an REI of 24 hours or more, allow early entry to harvest roses under the following conditions:

(a) Must meet all the early-entry conditions for the 12–hour REI pesticide products listed above.

(b) During the first 12 hours of the REI period, early-entry workers would be required to wear additional PPE consisting of canvas (or similar material) arm sleeve protectors and a waterproof apron that protects the upper torso and reaches to approximately knee level.

C. Background on the Rose Industry

The USDA 1995 Floriculture Crops Report estimates the farm gate value of the U.S. greenhouse rose crop at approximately $124 million. Roses, Inc. estimates that 200 cut-rose growers cultivate more than 15 million rose plants in the U.S. with the majority of growers located in California. Roses, Inc. estimates that the industry has 1,580 greenhouse production workers. Of these workers, 1,190 (75%) are harvesters. Rose harvesting takes place throughout the year and requires training in harvesting techniques. Roses, Inc. maintains that the turnover rate of harvesters is low.

According to Roses, Inc., rose varieties reach the harvest stage in cycles, with a single plant producing approximately 24 roses per year. Roses, Inc. explains that the commercial quality standards demand that roses be cosmetically perfect and at a bloom stage where the bud is just beginning to open. Roses, Inc. notes that, to meet such standards, pesticides must be used to control insects and disease. Roses, Inc. notes that a rose will remain at the most commercially valuable stage of bud opening for only several hours. Thus harvesting must occur at least twice daily to cut flowers that can be sold at a premium price. Roses, Inc. also states that roses which have not been cut at the proper bud stage are practically without commercial value.

Because roses have a short shelf life and cannot be stored to meet floral holiday demands, Roses, Inc. states that increased production to meet holiday demands is accomplished with prune and pinch practices. Using this labor intensive method, normal production can be doubled. Roses, Inc. requested early entry for up to 8 hours within a

24–hour period 2 weeks prior to the major floral holidays.

The major rose insect and disease problems identified by Roses, Inc. include: aphids, botrytis, downy mildew, powdery mildew, spider mites, thrips, and whiteflies. Roses, Inc. provided a list of chemicals commonly used to combat these problems. EPA requested that Roses, Inc. provide a list of chemicals, with 24- to 48-hour REIs, that the rose industry believed to be essential for their industry. Roses, Inc. identified the following 28 active ingredients as essential to the rose industry: abamectin, acephate, bifenthrin, chlorothalonil, chlorpyrifos, cyfluthrin, diazinon, dichlorvos, dienochlor, endosulfan, fenarimol, fenoxycarb, fenpropathrin, fluvalinate, iprodione, kinoprene, mancozeb, myclobutanil, naled, nicotine, piperalin, pyridaben, resmethrin, sulfotepp, thiophanate-methyl, triadimefon, triflumazole, and vinclozolin. In addition, Roses, Inc. submitted a list of 15 alternative active ingredients to address resistance issues and to supplement the pesticides identified as essential.

D. Economic Impacts

Information submitted for the 1994 cut-rose exception request estimated annual revenue losses from $22,000 to $50,000 per acre as a result of REIs imposed by the WPS, should no exception be granted. Roses, Inc. estimated in 1994 an average annual loss of $35,000 per acre for rose growers nationally. No new estimates or actual losses experienced between June 10, 1996, and today have been provided to the Agency. With Roses, Inc.'s 1996 estimate that the average rose grower across the U.S. has 3 acres of rose production, an average annual loss of $11,500 to $36,600 per acre per grower would result in a national projection of $34,500 to $109,400 annual loss per rose grower.

The estimated losses of $11,500 to $36,600 per acre are derived from a predicted loss of the equivalent of one harvest per week due to compliance with the WPS and are calculated using average July prices for selected Tea roses in California and New England. These figures appear to be based on the frequency that Roses, Inc. estimates pesticides are normally applied in rose production, the toxicity categories of the pesticides most commonly used on roses, and the asserted need to harvest roses two times per day to ensure the harvested crop will yield a premium price.

In response to the Agency's inquiry about typical spray schedules, Roses, Inc. reported that, on average, growers reported 6.3 pesticide applications per month with an average application time of 2 hours. Roses, Inc. explained that the industry does not have typical annual spray schedules due to holistic management procedures, differing levels of diagnostic expertise, the different products available for each pest or pathogen, the difference in pests or pathogens among greenhouses, changes in weather patterns, and the different pests that may be found in surrounding agricultural fields.

In response to the Agency's inquiry regarding progress in adopting safe alternatives to early entry since 1994, Roses, Inc. noted a number of factors which influenced slower progress than expected by the industry. Roses, Inc. cited the increased cost of pesticide product development and registration as a major factor in limiting the number of new pesticides coming on the market for greenhouse roses. In addition, Roses, Inc. stated that some manufacturers do not find pursuing the registration of their materials for use on cut roses to be economically viable due to the small size of the cut-rose industry. Roses, Inc. noted that with the loss of registered products used routinely before 1988 and a limited number of new pesticides being made available for rose production, pesticide-resistant pest populations are increasing. Furthermore, Roses, Inc. states that growers do not want to rely on a specific set of chemicals, such as those with shorter REIs, because resistant pest populations will build more quickly increasing the need for new products. Roses, Inc. also states that the rose industry has new insect problems, such as the western flower thrip. Treatment for the western flower thrip also kills the predators and parasites that may have been introduced to control other pests.

EPA asked Roses, Inc. to provide information on environmental and disease control measures designed to keep rose foliage dry and prevent fungal infection. A number of pesticides identified by Roses, Inc. are intended to control fungal diseases such as downy mildew and powdery mildew. These fungal diseases begin and spread more rapidly where plant foliage remains wet or humidity is very high for extended periods. Active drying of foliage would also facilitate possible application of pesticides at times when foliage would otherwise dry too slowly. Roses, Inc. stated that, in general, these methods have either large start-up costs, are expensive to use or both.

Non-chemical pest control methods that Roses, Inc. discussed include: high intensity discharge lighting, horizontal air flow fans, night curtains, infrared radiant heat lines, and step dehumidification. Roses, Inc. reports that the high intensity discharge lighting is not used by many growers because the cost of electricity is prohibitive. Horizontal air flow fans are widely used in the Eastern United States and less in the Southwest. Roses, Inc. states that Southwest growers are under greater financial constraints because of the expense of transporting the roses to the Eastern markets. Roses, Inc. states that growers cannot justify the expense of night curtains that prevent radiant energy loss from foliage. Infrared radiant heat lines and step dehumidification are not commonly used due to the prohibitive start-up costs. According to Roses, Inc., without such infrastructure investments, alternatives such as rearranging work schedules of harvesters or rearranging spray schedules are not viable options for growers. Roses, Inc. also states that imported roses currently hold 66% of the total U.S. cut-rose market thus reducing profits and further increasing financial constraints on the grower's ability to install physical barriers, supplemental lighting, and other environmental controls.

With current practices largely unchanged since EPA's consideration of the first exception in 1994, it is again clear that without an exception to early-entry prohibitions, rose growers are required to change their practices. EPA expects that such changes in pesticide-use patterns, harvesting, post-harvest handling, scheduling of activities, or other cultural practices will either decrease growers' revenues, increase costs, or both, thereby decreasing growers' profit at least in the short run. Given the high per acre value of rose production and the information submitted by Roses, Inc. in 1994 and 1996, EPA believes that the impacts of denying the exception at this time could be substantial. EPA needs documentation on the actual losses incurred as a result of the REIs of the WPS, since the expiration of the previous cut-rose exception on June 10, 1996. For example, commenters could present data for situations where the exception was needed in 1996 and identify the pest incident, the number of plants infected, the chemicals needed (applied), the quantity and value of cut roses lost and the length of time of the occurrence. With 3 months of data--including one of the major floral holidays (Sweetest Day)--EPA can more accurately project the quantitative economic impacts of denying a new exception to rose growers at this time.

E. Potential Risks

Roses, Inc. reported that their growers reported applying pesticides 6.3 times per month. Roses, Inc. explained that the industry does not have typical annual spray schedules due to holistic management procedures, differing levels of diagnostic expertise, the different products available for each pest or pathogen, the difference in pests or pathogens among different greenhouses, the changes in weather patterns, and the different pests that may be found in surrounding agricultural fields.

Roses, Inc.'s May 1996 formal request sought an extension of the 1994 WPS cut-rose exception. The 1994 exception included all products used in the cut-rose industry. At EPA's request, Roses, Inc. provided a list of commonly used chemicals. Of those chemicals, Roses, Inc. identified the following 28 active ingredients as essential pesticides for controlling prevalent disease or insect pests of greenhouse grown roses: abamectin, acephate, bifenthrin, chlorothalonil, chlorpyrifos, cyfluthrin, diazinon, dichlorvos, dienochlor, endosulfan, fenarimol, fenoxycarb, fenpropathrin, fluvalinate, iprodione, kinoprene, mancozeb, myclobutanil, naled, nicotine, piperalin, pyridaben, resmethrin, sulfotepp, thiophanate-methyl, triadimefon, triflumazole, and vinclozolin. These chemicals have REIs ranging from 12–48 hours. In addition, Roses, Inc. submitted a list of 15 alternative active ingredients to address resistance issues and to supplement the pesticides identified as essential. .

Products used in the cut-rose industry have many risk concerns associated with them. Many of the chemicals identified by Roses, Inc. as essential to production are classified by EPA in Toxicity Categories I and II, based on their acute toxicity. Acute toxicity is the capability of producing adverse effects from a brief exposure. Products containing these Toxicity I and II chemicals are assigned longer REIs in response to acute effect concerns.

Laboratory animal studies of some Toxicity Category I and II chemicals demonstrated other effects associated with long-term exposure, such as increased cancer rates, reproductive and developmental effects and effects on the nervous system. Routine repeated occupational exposures (that would occur during early-entry rose harvesting) become a greater risk concern when the chemicals can pose long-term effects. Delayed, chronic and subchronic effects are generally not reported as pesticide-related incidents because of the time between exposure and effect.

With an average of one greenhouse production worker for every 12,000 rose plants in production, a worker could spend a substantial portion of the typical 8–hour workday cutting roses. EPA's observations of greenhouses with active rose harvesting confirmed that workers have considerable contact with plant foliage. Typically, the workers' hands and forearms touch the rose plants and there is some lesser degree of contact with their upper torso and legs. In order to prevent injury from thorns on the rose bushes, the workers usually wear a leather or other heavy duty sleeve on one arm and leather gloves. EPA lacks data to establish how much contact with pesticide-treated surfaces occurs during rose cutting.

Roses, Inc. and individual California rose growers have offered information to demonstrate that rose harvesters do not experience unacceptable risks from pesticide exposure. Roses, Inc. submitted an analysis of pesticide poisoning incidents collected by the State of California, under their mandatory reporting law. These analyses showed that few incidents involved greenhouse workers (of whom rose harvesters are a subgroup) and that for some of the incidents, pesticides were not conclusively established to be the cause. In addition, a California rose grower provided testimony that worker compensation claims by his sector were significantly lower than in other agricultural and industrial sectors, thus indicating the comparative safety of pesticide use.

The Agency regards this information as useful, but limited. In particular, both pesticide poisoning reports and worker's compensation claims capture primarily adverse effects that are the consequence of brief exposures. Neither is a completely reliable indication of the potential for delayed risks. Most agricultural worker compensation claims result from non-pesticide related injuries. Moreover, many of the symptoms of acute pesticide poisoning resemble common symptoms of the flu or colds, and these incidents may not be recognized as caused by pesticides.

IV. Comments Solicited

The Agency is interested in a full range of comments and information on this exception request. The Agency particularly welcomes comments supported by information that would contribute to a better understanding of the economic costs to the rose industry from full WPS compliance with particular regard to REIs and the risk to workers from allowing early entry for harvesting.

By promulgating the WPS rule in 1992, the Agency made the decision that, in general, the costs of implementing the WPS were justified by the decreased risk to workers that the WPS restrictions provided. In requesting an exception for rose harvesting, Roses, Inc. argues that, in this particular industry, the costs of WPS compliance outweigh the worker risks avoided. Through public comment, the Agency is seeking information to supplement the Roses, Inc. request and to further improve the risk-benefit analysis. The information being sought is described in further detail below. Commenters are encouraged to provide comments on all or any portions of the information sought by the Agency.

A. Need for an Exception

The Agency is interested in obtaining information regarding the need for another exception and whether such an exception, if any, should be broader than the 1994 exception. The Agency would like to estimate the cost to the rose industry of complying with the REIs specified on product labeling and compare that cost to expected profit to determine economic feasibility.

Information that would be valuable to the Agency includes:

(1) Average cost of production and annual budget information.

(2) Estimates of the impact on yield, quality, price, revenue, and production costs per acre of cut roses when a pest problem occurs and a grower:

(a) Reschedules the timing of treatment application with current pesticides and/or reschedules harvesting to meet the REI requirements.

(b) Substitutes pesticides with products with shorter REIs and harvests twice a day.

(c) Uses non-chemical pest control methods and harvests twice a day.

(d) Experiences losses due to pests (no control) and harvests twice a day.

(e) Experiences losses by harvesting less than once or twice daily and not modifying treatment schedules or pesticides applied.

(3) Need for an exception during different harvesting periods, such as prior to major floral holidays.

(4) The shelf life of roses.

B. Risk

The Agency is also interested in information which will improve its ability to estimate the risk to the workers of increased exposure to pesticide residues during any early entry harvesting performed under an exception.

1. *Chemical list.* The Agency has not conducted an in-depth analysis of the potential risk of each of the chemicals identified by Roses, Inc. as essential. Of the chemicals identified by Roses, Inc. only one, piperalin, has been through EPA's reregistration process. EPA is interested in determining which products are needed the most, possible alternatives to these products including advantages and disadvantages, and which products' REIs are most problematic. A prioritization of chemicals needed for rose growers would assist the Agency in developing a list of chemicals that may meet the risk-benefit criteria necessary for granting an exception. If possible, typical or average spray schedules for growers will aid in identifying the most commonly used chemicals as well as aiding in estimation of productions costs.

2. *Personal protective equipment.* The Agency is interested in learning about the extent of compliance with the PPE requirements during the 2–year period of the 1994 WPS cut-rose exception. This information will assist EPA in determining the feasibility for workers to wear the required PPE. The Agency welcomes comments that address:

(a) The length of time harvesters entered treated areas under an REI.

(b) Whether workers wore early-entry PPE listed on the label.

(c) If workers found the required early-entry PPE uncomfortable to wear in the greenhouse.

(d) If any difficulties were experienced in cleaning and maintaining PPE.

3. *Worker risk.* The Agency is especially interested in information that would provide insight on the potential risk to cut-rose harvesters if an exception were granted. The Agency is interested in information that addresses all aspects of worker risk, both acute and chronic effects. This information will assist the Agency in establishing the potential risk to workers. Information sought by EPA includes:

(a) Incidents requiring medical treatment due to exposure to pesticides registered for roses.

(b) Exposure data for cut-rose harvesters.

(c) Foliar dislodgeable residue data of pesticides registered for use on roses.

(d) Any exposure studies conducted on hand harvesters of cut roses or other crops.

(e) Any mitigation measures that have or would reduce worker exposure.

(f) Whether workers are paid an hourly wage or piece rate.

C. Possible Exception Terms

The Agency is also requesting comment on possible terms and restrictions of any exception including their effect on the risk to workers and cost of compliance. If an exception were granted, the Agency is likely to require that the conditions of WPS § 170.112(c)(3) through (c)(9) continue to be met. These requirements include:

(1) No entry takes place for the first 4 hours after the application and thereafter until any inhalation exposure level listed on the label has been reached or any ventilation criteria established by the § 170.110(c)(3) have been met.

(2) The PPE required for early entry is provided, cleaned and maintained for the worker.

(3) The required basic training and label-specific information has been furnished.

(4) Measures to prevent heat-related illness are implemented, when appropriate.

(5) Decontamination and change areas are provided.

EPA is considering requiring all cut-rose growers intending to use the exception to provide written notification before using the exception and to include a list of products that they routinely use to the State Lead Agency. In addition, the Agency may require cut-rose growers to keep records of date, time of application, number of workers entering the treated area and to report any incidents involving possible pesticide exposure to EPA's Office of Pesticide Programs.

The Agency would also like comment on the following possible options or restrictions:

(1) The length of time or number of times a worker could perform early-entry hand-labor work.

(2) If an exception greater than 4 hours is granted, a requirement that workers decontaminate and change into fresh PPE after each 4–hour period of harvesting.

(3) An exception for all chemicals registered on cut roses.

(4) An exception limited to specific chemicals.

(5) An exception that could only be used a limited number of times, e.g., four times per month.

(6) An exception that could only be used for the harvesting period prior to some or all of the five major floral holidays.

(7) An exception that would incorporate a combination of the above alternatives.

(8) The length of time an exception should be valid.

D. Consultations

During the public comment period, EPA is planning a meeting with cut-rose growers and harvesters that are interested in discussing key issues, clarifications and possible mitigation measures. All information obtained from these meetings will be recorded in the public docket. Information on accessing the docket is presented in Unit VI. of this document. For further information regarding these meetings contact: Sara Ager, Certification and Occupational Safety Branch (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone number and e-mail address: (703) 305-7666, e-mail: ager.sara@epamail.epa.gov.

VI. Public Record

Interested persons are invited to submit written comments on this action. Comments must bear a notation indicating the docket control number [OPP-300164I]. A record has been established for this action under docket number ''OPP-300164I'' (including comments and data submitted electronically as described below). a public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for the action as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the location indictated above.

List of Subjects

Environmental protection, Occupational safety and health, Pesticides and pests.

Dated: October 24, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–27827 Filed 10–29–96; 8:45 am]

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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